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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

VITO GENOVESE, *Petitioner*

v.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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A writ of certiorari is respectfully sought, to issue to the Court of Appeals for the Second Circuit in this case.

OPINIONS BELOW

In a mass conspiracy trial for conspiracy to violate the narcotics laws, petitioner Vito Genovese was convicted by a jury and was sentenced by Judge Bicks to 15 years imprisonment and a $20,000 fine. No written opinion was rendered by the district court; but after the verdict Judge Bicks rendered two oral opinions which are set forth at pages A-32 through A-44 of Appendix A to this Petition. The opinion of the Court of Appeals, which affirms petitioner's conviction,

is reported at 274 E. 2d 179; together with two subsequent orders denying rehearing, it is set forth at pages A-1 through A-31 of Appendix A to this Petition.

JURISDICTION

The decision of the Court of Appeals affirming petitioner's conviction was rendered on January 12, 1960. Petitioner filed a timely petition for rehearing in which he petitioned the Court of Appeals to grant a rehearing, and if rehearing be denied, then to stay the mandate. On January 26, 1960, the Court of Appeals entered an order denying the aforesaid petition. Petitioner thereupon requested the Court of Appeals to rehear in the light of additional matters presented in certain reply papers which had not been before the Court of Appeals at the time it entered its order of January 26, 1960. On January 29, 1960 the Court of Appeals entered an order stating: "The petition is denied, treating these papers as a petition for rehearing of the denial of a motion for rehearing and for stay of the mandate". (For the decision and orders of the Court of Appeals, see pages A-1 through A-31 of Appendix A to this Petition.) On February 18, 1960, by order of Mr. Justice Harlan, the time within which to file a petition for certiorari was extended to and including March 26, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 and Rule 37(b) of the Federal Rules of Criminal Procedure.

QUESTIONS PRESENTED

1. Whether petitioner Genovese's right to a fair trial was violated by the severely prejudicial publicity which occurred both before and during the trial; and whether any of the numerous requests for relief on that account should have been granted.

2. Whether the evidence is insufficient to sustain petitioner Genovese's conviction—and especially whether it is insufficient in view of (a) the fact that the sole supposed proof that Genovese participated in this alleged narcotics conspiracy came from uncorroborated testimony of the witness Cantellops, who was named in the indictment as a co-conspirator, and (b) the showing in the trial record as to Cantellops' unreliability and perjuriousness.

3. Whether under the *Jencks* decision and the Jencks Act the trial judge, on the basis of *in camera* examinations, improperly withheld statements and reports from defense counsel; and in any event, whether the Court of Appeals has failed to give—and to show that it has given—proper appellate review to that matter.

4. Whether petitioner Genovese's right to a fair trial has been prejudiced by other occurrences including, among others, (1) the trial court's refusal to make inquiry into a question raised concerning possible "frame-up", (2) the prosecutor's unfair tactics in summation, and (3) unfairness in the judge's charge to the jury.

5. Whether this Court should order relief, in view of the facts that (1) the Government's principal witness Cantellops has now made a major recantation of the testimony he gave at this trial, including recantation of testimony as to specific incidents which concern petitioner Genovese, and (2) independent new evidence has also been discovered in refutation of important segments of Cantellops' testimony at the trial.

In addition, petitioner incorporates by reference and relies on all other questions presented on behalf of other defendants in this case who have filed or are filing petitions for certiorari.

Petitioner relies on each question separately, and also upon their cumulative effects.

All questions presented are presented both as questions arising under the minimum standards required by the Due Process Clause of the Fifth Amendment, and as questions arising under such higher standards as are applicable to criminal cases in the federal courts.

CONSTITUTIONAL, STATUTORY AND RULES PROVISIONS INVOLVED

The constitutional, statutory and rules provisions which are pertinent are, in the aggregate, somewhat lengthy; accordingly they are set forth in Appendix B to this Petition.

STATEMENT[1]

This Petition arises out of one of the most important federal criminal cases of recent years. It involves issues of national significance, and raises fundamental questions concerning the standards of justice applicable to criminal trials in the federal courts.

Petitioner, Vito Genovese, was one of many persons indicted on July 7, 1958, in the Southern District of New York, for an alleged conspiracy to violate the narcotics laws, 21 U.S.C. §§ 173, 174 (App. 2a, 50a-58a).

[1] Record references in this Petition are designated as follows: "Tr." refers to the page number of the reporter's transcript of the proceedings in the District Court; and when the page number thereof is preceded by "P", then it refers to the reporter's transcript of the preliminary proceedings in the District Court. "App." refers to the page of the printed Appendix filed in the Court of Appeals on behalf of appellants Evola, Gigante and Genovese. Both the full record and the printed Appendix have been certified by the Court of Appeals to this Court; and nine additional copies of the printed Appendix have been lodged with the Clerk of the Court.

The indictment named a total of 37 defendants, including petitioner Genovese, and 14 other co-conspirators, including Nelson Silva Cantellops.[2] Cantellops was to be the Government's principal witness at the trial; and Cantellops' uncorroborated testimony was to be the sole source of the Government's supposed proof that petitioner Genovese had any connection with the alleged conspiracy. As will appear, Cantellops was a witness with a long criminal record and other exceptionally disreputable background; before the grand jury he had previously given sworn testimony which differed irreconcilably from his testimony at the trial; at the time of the trial he was in federal custody but under a New York State criminal sentence, which shortly afterwards was commuted on recommendation of the United States Attorney in recognition of Cantellops' assistance; and his credibility was to be a principal issue at the trial. See pages 17-22, *infra*. In addition, evidence has recently been furnished to the Government to the effect that (1) subsequent to the decision by the Court of Appeals, Cantellops has made a major recantation of the testimony he gave at this trial, including recantation of testimony he gave at the trial as to specific incidents which concern petitioner Genovese, and (2) independent new evidence has been discovered in refutation of important segments of Cantellops' testimony at the trial. See pages 47-50, *infra*, and Appendix D to this Petition.

Prejudicial Adverse Publicity Before the Trial. When arraigned on July 8, 1958, petitioner Genovese pleaded not guilty and was released on $50,000 bail

[2] In the indictment Cantellops is named simply as "Nelson Silva," a name he testified he used interchangeably (Tr. 921; App. 161a).

(App. 2a). At the arraignment the then United States Attorney, Paul W. Williams, appeared personally for the Government and personally helped set in motion a series of events which had the effect of depriving petitioner of the right of a fair trial. This series of events consisted of enormously prejudicial publicity (see especially the items set forth in Appendix C to this Petition), through press and other media, with which the New York metropolitan area was saturated between the time of indictment and the time of trial and which thereafter continued unabated during the course of the three-month trial.

The New York Journal-American for July 8, 1958, carried a long front-page article under a large two-column headline (see pages C-1, C-2, C-3 of Appendix C):

"36 More Named
In Mafia Roundup"

with a carryover headline on the inside page:

"Mafia Boss Jailed
In U. S. Crackdown"

Calling Genovese "chief of the Mafia", the Journal-American stated:

> "When Genovese, oft-branded as the most sinister mobster of this era, and undisputed leader of the underworld was brought before Federal Judge Herlands, U. S. Atty. Paul W. Williams said:
>
> "'Genovese is the man responsible for seeing that any annoying competition to the vast narcotics empire is eliminated'".

The article stated also:

> "Williams said Genovese, 'kingpin of the mob,' and his co-defendants, imported drugs, mostly heroin, from Europe, through Puerto Rico, Cuba and Mexico, and funneled them through underground channels throughout the nation".

The Journal-American stated also that "Genovese, 61, besides being the overlord of the nation's dreaded Mafia organization, is also a gambling kingpin, and alleged boss of vice and waterfront rackets in the city"; and that "For the first time, Genovese and Gigante, who represent the 'elite' and bottom-rung mobsters, respectively, were pinned to the widespread narcotics traffic and racketeering". The Journal-American went on to say:

> "U. S. Atty. Williams, who announced the arrests, said the result of the crackdown 'might well be to drive the Mafia out of the narcotics business.'
>
> "Williams said the other arrests would include 'at least two, and possibly more' of the underworld delegates to the Mafia's 'convention' last November in upstate Apalachin.
>
> " 'Our probe of the suspects' narcotics activities . . . disclosed that Genovese was the hub around which the entire drug network operated, and Gigante was one of his proteges and a rising star,' Williams added."

Among other things the Journal-American also stated:

> "He [Genovese] is currently 'suspect No. 1' of New York Police as the man who had a hand in ordering the assassination of Albert Anastasia, one time lord high executioner for Murder, Inc."

Other newspaper accounts gave similar prominence to the United States Attorney's statements in connection with the arrest and arraignment, and added condemnatory observations of their own (see pages C-4 through C-15 of Appendix C). The World-Telegram, its headline calling Genovese "Rackets King", stated that "Mafia monarch Vito Genovese, 'king of the rackets', and his court clown, Vincent (The Chin) Gigante" had been arraigned; and it quoted United States Attorney Williams as saying, when Genovese had been arrested the preceding night, that "the arrest of Genovese is one of the most important arrests ever made in this field" and "Our investigation disclosed Genovese was the hub around which the entire conspiracy revolved". The Daily News opening sentence referred to Genovese as "reputed Mr. Big of the nation's dope and gambling rackets"; and it quoted the United States Attorney as saying: Genovese "is the No. 1 man in this conspiracy. He was referred to by his underlings as the 'right man' ". The Herald Tribune carried a headline that Genovese had been "Called 'No. 1' in Huge Dope Ring", and began its story by calling Genovese "a Don (Prince) of the Mafia", following this with extensive quotations from the United States Attorney's remarks. The New York Times account included the following:

> "Genovese, a reputed Mafia leader, Mr. Williams said, is known to his associates as The Right Man. He called this title 'indicative of his distinction and a badge of his importance in the organization' ".[3]

[3] None of the sweeping condemnatory statements contained anything to disclose that the Government's supposed proof as to whether Genovese was known by the name "The Right Man" would depend solely on inferences from testimony to be given at the trial

Thereafter, while this case was awaiting trial, the New York Journal-American published a highly lurid and exceptionally prejudicial series of five lengthy feature articles concerning the petitioner Genovese (four of which are set forth at pages C-17 through C-44 of Appendix C). Whatever motive may have inspired publication of such articles while this case was awaiting trial, it is plain that their content was devastatingly inflammatory against petitioner Genovese. The series began on Sunday, August 3, 1958, with a prominently displayed front-page article having a large headline: "VITO GENOVESE, AMERICA'S NUMBER 1 RACKETEER". The second installment was accompanied by an eight-column red-ink headline across the top of the front page, "HOW VITO GENOVESE BECAME NO. 1 RACKETEER"; and subsequent installments likewise carried headlines calling Genovese "AMERICA'S NUMBER ONE RACKETEER".

In this series the New York Journal-American referred to Genovese as "America's King of the Rackets", as "King of the Underworld", as "the Big Man of American crime". They said: "Only weeks ago Paul Williams, U. S. Attorney, since resigned to joust in the New York political arena, described Genovese as 'the nation's number one racketeer' ". They referred to Genovese's early life in the Lower East Side neighborhood where "the power of the dreaded Mafia—the 'Black Hand' terror society—was unquestioned", and said Genovese had

by the Government's principal witness, Cantellops; that, indeed, the Government's entire supposed proof to connect petitioner Genovese in any way with this alleged narcotics conspiracy would come solely from Cantellops' testimony without any corroboration; and that Cantellops' credibility would become virtually the principal issue in the trial. See pages 17-22, *infra*.

early been "accepted as a rising leader in the Mafia". They referred to Genovese's two convictions, in 1917 and 1927 respectively, on charges of carrying a gun, and went into great detail concerning eight other arrests, "including three times for homicide, but none of the charges ever stuck"; "like magic, he has skirted the penalties of the law". They gave elaborate descriptions of what they stated to be Genovese's connections with various rackets and racketeers, as well as with Mussolini and the Italian Fascist government. They talked of Genovese's "nationwide web of power—his 'remote control' that extends to every corner of the continent." They said that "Time and again, undercover agents have found contacts between Genovese and top mobsters in rackets throughout the United States". They stated that according to Genovese's wife Anna, who had sued him in 1952 for separate maintenance, "Genovese also 'invested in narcotics' "; and they stated: "By now" [apparently meaning 1949], Genovese was known to the Federal Bureau of Narcotics "as No. 130 on their list of suspected major narcotics violators". The final installment, after referring to Genovese's attending "with 64 other Mafia leaders at the now-celebrated mountaintop crime conclave at Apalachin, N. Y.", concluded by saying Genovese had been arraigned "on an indictment charging him with being the head of a vast international narcotics ring", and that "For the first time in twelve years Vito Genovese—Don Vitone, the great one—faces a charge that could ultimately put him behind prison walls."

Additional prejudicial newspaper references to petitioner Genovese appeared during the fall of 1958, as this case was nearing trial. The New York

Journal-American for October 23, 1958, under a headline calling Genovese "King of the Rackets", said he was "alternately called 'King of the Rackets' and 'Mr. Mafia' ", and was "awaiting trial on a narcotics indictment" (see page C-45 of Appendix C). The New York World-Telegram for November 13, 1958, commemorating the first anniversary of what it called "the Apalachin barbecue that roasted gangdom" referred to "Apalachin's premier delegate, Vito Genovese, once designated by Thomas E. Dewey as 'the king of the rackets' " (see page C-50 of Appendix C).

On December 1, 1958, an application was made pursuant to Rule 21 of the Federal Rules of Criminal Procedure, for a change of venue away from the Southern District of New York, based on the foregoing adverse and prejudicial newspaper publicity which, it was urged, would prevent petitioner Genovese from obtaining a fair trial in the district; and if a change of venue were denied, then for a severance (Tr. P28-P55, P86-P99; App. 66a-81a). An NBC television news broadcast in New York on December 1, 1958, showing a picture of Genovese at the Federal Court House in Foley Square with commentary labelling Genovese as "often called the 'reputed rackets king' ", was also brought to the court's attention, as was a Daily News article of December 2, 1958 (Tr. P160-P174; App. 83a-85a). The application for change of venue, or severance, was considered on the merits by Judge Bicks and was denied (Tr. P215; App. 85a).

At various dates and for various reasons the indictment was severed as to 20 of the 37 named defendants (App. 14a-15a, 19a, 28a), leaving 17 defendants (in-

cluding petitioner Genovese) who went to trial when selection of the jury began on January 5, 1959 (App. 28a). Judge Bicks made inquiries of the veniremen which, he stated in an oral opinion he rendered after verdict, satisfied him "that any pre-trial publicity concerning this case did not come to the attention of the jury" (see page A-34 of Appendix A to this Petition). The trial opened before the jury on January 12, 1959, and lasted until the verdicts were brought in on April 3, 1959 (Tr. 1, 7240-7243; App. 140a, 35a, 1146a-1148a).

Prejudicial Adverse Publicity During the Trial. During the trial the torrent of prejudicial publicity continued. The New York Herald Tribune for January 10, 1959, reporting that jury selection had been completed, referred to Genovese as "long-time racketeer" (Genovese Exhibit Z). The same day's New York Daily News called Genovese "reputed head of a multi-million narcotics ring" (Genovese Exhibit AA). The New York Herald Tribune for February 13, 1959, contained a long article on the Apalachin meeting, based primarily on testimony and statements made on February 12, 1959, before the Senate Rackets Committee in Washington, and these included a statement that "'Ernie the Hawk' performed a murder for Vito Genovese, reputed Mafia leader, but never was convicted because the chief witness against him was poisoned in jail" (see page C-60 of Appendix C). A front-page story in the New York Herald Tribune for Sunday, February 15, 1959, described in great detail the activities and the views of the Attorney General's Special Group to Prosecute Organized Crime, which it said had been established in April 1958 within the Department of Justice under

Milton R. Wessel "as a temporary body to proceed nationally against the country's top 100 racketeers", and the story went on to say (see pages C-62 through C-64 of Appendix C):

> ". . . they are out to find the syndicates that control criminals rather than crime; the underworld organizations that operate for mutual protection. Members of one group apparently enter 'business' alliance with members of another for a specific operation — a gambling hall in Cuba that may involve Vito Genovese and Meyer Lansky, a narcotics operation that stretches from Harlem to Turkey."

The New York Journal-American for February 16, 1959, under the headline "HUNT MAFIA LINK IN DOPE RAID", began its article (see page C-65 of Appendix C):

> "Federal narcotic agents were probing a Mafia link today after smashing what they termed the biggest narcotics ring in the United States.
>
> "In a series of raids which began at 8 p.m. Thursday and lasted until 5 a.m. yesterday, thirty-two suspects were seized and a near-record haul of $3,660,800 worth of heroin was confiscated.
>
> "Investigators were checking reports that Vito Genovese, 'King of the Rackets,' was the mastermind behind the whole operation.
>
> "Genovese, 61, is currently on trial in Federal District Court on another dope charge along with 16 other defendants. They are accused of operating a multi-million dollar drug importing syndicate."

The New York Post for February 19, 1959, contained this item (Genovese Exhibit V-2):

> "Radio station WMCA, which planned to start its 'Profiles in Crime' series Monday with a program on racketeer Vito Genovese, switched to a program on Frankie Carbo ('The Hood Who Controls Boxing'). The reason: Genovese is on trial . . ."

The next day's New York Post, in a feature on Genovese and this trial, referred to Genovese as "an emperor in his own world", "the Great One, King of the Rackets", ending with the comment: "The jurors know little about what's going on, about pushers and payoffs, fixes and cops—while Don Vitone [Genovese] knows many things" (see pages C-67 and C-68 of Appendix C).

This array of widespread prejudicial publicity was promptly followed by a lengthy opening feature in the February 23, 1959, issue of LIFE magazine, spread across nine full pages (Genovese Exhibit W[4]). The headline proclaimed in large type:

"A SEARCHING LOOK AT BIG CRIME
FROM SHADOWS, HOODLUMS"

and the text emphasized the importance of the law enforcement work being done by Mr. Wessel's Special Group. After displaying pictures of Capone's grave, of Luciano, Lepke, Dutch Schultz and Anastasia, accompanied by a text headed "Old-Style Mafia and Its Heirs, the Calculators", this LIFE feature then had a two-page spread entitled "THE FOUR ACES OF RACKETS AND THEIR STERN PURSUERS". The text stated that "gangland has neatly carved the U. S. into four jurisdictions . . . which are dominated by the

[4] Ten copies have been lodged with the Clerk.

four mobsters shown on these pages". A large accompanying picture of Genovese carried the caption "Northeast Boss Vito Genovese heads into New York Federal Court House to his trial for drug trafficking. He may also run lottery racket." Immediately adjacent was a picture showing "Man of Law, Milton R. Wessel listens in New York headquarters while his northeast Chief, William Esbitt, phones". This latter photograph apparently was posed in the Special Group's office in the Federal Court House in Foley Square (Tr. 3183-3185; App. 796a-797a). Articles in the New York World Telegram for February 27, 1959, and March 6, 1959, referred to Genovese as "reputedly the top man in organized crime today", and "millionaire mob monarch who is on federal trial for narcotics operations" (see pages C-69 through C-72 of Appendix C). On March 7, 1959, the New York Journal-American, under the headline "MANY TOP HOODLUMS BAGGED IN U. S. CRIME HUNT", reviewed the results of the "big push" which the Justice Department had started against the underworld a year ago, stating that "Rogers announced the program a year ago as a systematic 'non-sensational' drive to combat organized crime with a highly organized series of prosecutions aimed primarily at getting 'the 100 Top Hoodlums' behind bars or out of the country"; and the Journal-American went on to say: "Vito Genovese, described as top man in the New York underworld — and who attended the Apalachin meeting, was indicted on a narcotics charge and is now on trial in New York" (see pages C-73 through C-74 of Appendix C). The New York Herald Tribune for March 22, 1959, reviewing the accomplishments of Assistant Attorney General Malcolm Anderson who was resigning April 1,

referred to Genovese as "an underworld bigwig sometimes described as Chief of the Mafia in the United States" (see page C-75 of Appendix C).

Shortly before this case was to go to the jury, there occurred the arrest of a missing co-defendant, "Big John" Ormento, about whom the Government's principal witness, Cantellops, had testified repeatedly during the trial; and newspaper accounts of this event included further prejudicial comments. Thus the New York Post for March 31, 1959, said Ormento had been "indicted with racketeer Vito Genovese last July 8 in what the government called a crackdown on the nation's top drug ring" (see page C-77 of Appendix C); and the New York Journal-American for April 1, 1959, calling Genovese the "bosom pal" of Ormento, said "Genovese is the reputed head of the dread Black Hand society in America" (see page C-79 of Appendix C).

In three instances the United States Attorney's office expressly disclaimed Government responsibility for the contents of articles published during the trial (Tr. 2851-2854, 3058-3063, 6679-6680; App. 757a-759a, 1029a-1030a). Throughout the long trial the judge regularly and repeatedly admonished the jury not to read about or listen to or look at discussions of the case or of the defendants. On two occasions (February 16 and 17) after the jury was empanelled the judge inquired whether, since the previous recess, the jury had read or discussed any articles referring to any defendant on trial, and the response from the jury was negative (Tr. 2705, 2861; App. 760a). Nevertheless, it is clearly the fact that during the three-month trial the members of the jury regularly separated for the evenings and for weekends, holidays

and other days when the jury was in recess, and went home and elsewhere in the community.

During the course of the trial numerous motions were made on behalf of petitioner Genovese for mistrial, or in the alternative for severance, on account of the serious prejudicial effects of the unfavorable publicity, individually and cumulatively, and the consequent impairment of petitioner's right to a fair trial. (Tr. 704-706, 2694-2705, 2849-2854a, 3058-3063A, 3175-3193, 3548-3550, 4004, 4105-4107, 4236-4237, 4884-4891, 5508-5509, 6138-6141, 6670-6681, 6796-6799, 6882-6886; App. 755a-760a, 790a-803a, 875a-881a; 1014a-1015a, 1024a-1032a, 1033a-1036a). These were all denied (Tr. 706, 2854a, 5726, 6141, 6885-6886; App. 760a, 934a, 1035a-1036a). After the verdict the trial judge reaffirmed his rulings that these occurrences during the trial did not constitute ground for relief (Tr. 7395-7404; see oral opinion reproduced at pages A-32 through A-37 of Appendix A).

The Witness Cantellops as the Uncorroborated Sole Source of the Supposed Proof against Petitioner Genovese. Nelson Silva Cantellops, who was named in the indictment as a co-conspirator but not as a defendant, was, as the Court of Appeals observed, "the principal government witness" in the case; Cantellops testified "for five days on direct examination and for fourteen days on cross-examination", and his testimony "covers about 2,000 pages of the stenographic minutes". Through Cantellops the Government sought to prove the existence of a single large-scale conspiracy to import, distribute, purchase and sell narcotics in violation of law. According to his testimony at the trial, Cantellops first joined this conspiracy in March 1955, and in March 1955 he

went from New York to Las Vegas, Nevada, in order to make a delivery of narcotics in Las Vegas, and he continued serving the conspiracy in various ways until he was arrested on July 1, 1957.

The record shows in great detail Cantellops' long record of criminal convictions and other illegal and disreputable background.[5] His most recent conviction arose out of a New York State narcotics charge for which he had been arrested July 1, 1957, and had thereafter been in custody; while in the Tombs he had been interviewed on a number of occasions by various Federal representatives, including Agent Rowan and Assistant United States Attorney Shaw; he was allowed to plead guilty on August 14, 1957, to a lesser charge of "attempted felonious possession of narcotics"; and when the General Sessions judge on November 26, 1957, had imposed a minimum sentence, the judge referred to his own conversation with Messrs. Shaw and Rowan, and said he was imposing the low sentence because Cantellops was helping the authorities, but that "otherwise, I would bury you". Thereafter Cantellops had been sent to Sing Sing, where he remained for two weeks; he was then turned over to the federal authorities, in whose custody he remained through the time of the trial and who interviewed and interrogated him on a great many occasions. Prior to the indictment he had appeared several times before the grand jury, and testified under oath to successive versions of vari-

[5] Nevertheless, it has now been discovered that there was one phase of Cantellops' unlawful activities which remained completely undisclosed throughout the trial and which, if disclosed at the trial, might have led then—as it does now—to the uncovering of evidence refuting an important segment of Cantellops' testimony at the trial. See pages 48-50, *infra*, and Appendix D to this Petition.

ous events, many of them differing fundamentally from the testimony he gave at the trial.[6] Shortly after the trial, "at the request of the United States Attorney", the Governor of New York commuted Cantellops' minimum sentence so that he could be paroled.[7]

It is Cantellops, and Cantellops alone, whose testimony provided the sole and uncorroborated supposed proof to connect petitioner Genovese with this alleged narcotics conspiracy. As the trial judge stated in charging the jury: "The witness Cantellops gave the only testimony concerning the defendant Vito Genovese" (Tr. 7129; App. 1101a).

Taking Cantellops' testimony concerning Genovese most favorably to the Government, and even ignoring all contradictions or prior inconsistencies shown by the record, the testimony amounts to only the following. Cantellops testified: (1) Cantellops met in November 1955 with five of the persons named as defendants in the indictment, at which narcotics distribution plans were discussed (Tr. 1133-1156; App. 263a-274a); and when various points came up the others in the room said they would discuss it later with "the right man" (Tr. 1148-1149, 1299; App. 269a-270a, 341a). (2) On two occasions in the late spring of 1956 or beginning of summer, on 4th Street he saw Genovese talking with the defendant Carmine Polizzano; on one of these, "after they finished talking

[6] The foregoing events in this paragraph appear in many parts of the record during the long examination of Cantellops on direct and cross examination. The conflicts between Cantellops' grand jury testimony and his trial testimony were numerous and irreconcilable, showing his unreliability and his capacity for perjury.

[7] See page 41, *infra*.

Carmine told me never to interfere when he was talking to the right man" (Tr. 1298-1299, 2861-2862; App. 340a-341a, 760a). (3) He heard the name "the right man" mentioned by the defendant Gigante when Gigante was driving Cantellops to Cleveland in July 1956, at which time Gigante said he would put in a word with Ormento and would try to make an arrangement for Cantellops to be introduced to the Right Man to see if Cantellops' gambling invention could be worked out (Tr. 1299-1300, 1208-1211; App. 341a, 291a-292a). (4) At the beginning of August 1956, Ormento, Rocco, "the Mexican", Evola and Cantellops went in a car and drove to a restaurant and bar on East 86th St., where Ormento went to a table at which Genovese was sitting, and after talking to Genovese Ormento came back and said to Cantellops, "Let's go, the right man wants to take a look at you to see if you are allright", whereupon they left and went off to meet "the Mexican" and the defendant Santora (Tr. 1224-1228, 2862; App. 301a-303a, 761a). (5) Within the last few days of August or early September 1956 Cantellops was picked up at his home by Ormento, Evola, Pappadio and Galante, who drove to a German restaurant in East 86th Street; Ormento went in to make a phone call, and came back in a few minutes saying "We can go, they are behind us"; they got back into the car and went to the west river drive, parking there; another car came up behind, and Ormento and Cantellops moved to the second car, which Genovese was in and Gigante was driving; Ormento said, "'Vito, this is Nelson; Nelson, this is my good friend" and Ormento told Genovese, "This man is doing a good job for us"; Ormento then said to Cantellops: "This is the right

man. Explain to him your invention. He may help you out"; Cantellops explained his invention; Genovese said "we were going to a meeting where territorial control was to be discussed and these people were counting on me [Cantellops] to help them out, that I could earn my money . . . over there and make the first sample of this invention and . . . they will take care of the rest"; that the two cars drove to a house on Seymour Avenue in the Bronx, and everyone went in except Genovese and Gigante; that Mazzie and other people were inside; that discussion of matters relating to narcotics distribution took place inside; that at the end of the meeting Genovese came in and asked what was the decision, what they had in mind, and "Everybody spoke his part and the time and details", and Genovese said "he wanted to know because he wanted to know when to send his men in"; that Genovese and Gigante then drove away in their own car; and Cantellops went back with Ormento, Evola, Pappadio and Galante, discussing with them the role he was to play in the narcotics distribution (Tr. 1291-1317, 2862-2864, 3081-3099; App. 336a-352a, 761a-762a).

It has been contended throughout this case that the foregoing testimony by Cantellops is plainly insufficient to sustain conviction of petitioner Genovese. The record shows, moreover, that on March 18, 1958, less than four months before this indictment was found, Cantellops had testified before the grand jury, when asked whether he had ever met Genovese, "Saw him once but I never had a chance to talk to him", and had testified that the place he had seen him was an Italian restaurant on East 96th Street, where Santora, "the Mexican", Ormento and Rocco had met Genovese by chance, and that he did not know anything

about Genovese's business (Tr. 2869-2871; App. 765a-766a). The contradiction between this grand jury testimony and what he said at the trial further underscores the utter unreliability of the testimony Cantellops gave at the trial concerning Genovese; it demonstrates the vast propensity of Cantellops for perjury on this very subject, and the manifest injustice of allowing a conviction to be based solely on so flimsy a foundation. In addition, as will appear (see pages 47-50, *infra*, and Appendix D to this Petition), Cantellops has now made a major recantation of the testimony he gave at this trial, including recantation of testimony as to specific incidents which concern Genovese, and independent new evidence has also been discovered in refutation of important segments of Cantellops' testimony at the trial.

The Begendorf-Enright Incidents. On Saturday evening, December 6, 1958, shortly before the trial was supposed to begin, United States Customs Agent B. R. Begendorf telephoned petitioner Genovese on an unlisted number at Genovese's home at Atlantic Highlands, N.J., to say he wanted to see Genovese in person and would come to Genovese's home that night. According to Genovese's affidavit, to avoid meeting with Begendorf alone, Genovese asked his daughter and a woman neighbor to come to his house; Begendorf on arriving asked Genovese about the case, and said that Genovese would never hear Genovese's name mentioned in the trial, that the U.S. Attorney, Paul Williams, who had meanwhile resigned, had wanted to get some publicity, had wanted to get the nomination and become Governor; and Begendorf then left when Genovese refused to talk with him alone. (App. 1168a-1169a).

Begendorf's affidavit claimed there were some inaccuracies in the Genovese affidavit, and asserted: "I did not tell Genovese that he was framed, or that the indictment against him was for purposes of publicity" (App. 188a).

The episode was promptly reported by Genovese's trial counsel (Tr. P271-P277; App. 86a-90a), who requested the court to bring in Agent Begendorf to find out why he had called Genovese; the United States Attorney said he would investigate and report. That same day he reported interrogating Begendorf on the matter; Begendorf had admitted telephoning and visiting Genovese, that two women were present, and that there had been some discussion about the case, although Begendorf said Genovese instigated such discussion; but Begendorf had denied indicating or stating that the indictment was obtained for publicity reasons or that the case was a frame-up or words to that effect; and he had said he made the visit on his own, without request, direction or knowledge by anyone in the Government. The United States Attorney also reported Begendorf had formerly been employed by the Bureau of Narcotics, from 1954 until April 1958. Petitioner's counsel said that Genovese and the two women witnesses would state under oath exactly what had happened, that this would show whether Begendorf had lied to the United States Attorney (Tr. P286-P306; App. 90a-104a). The Government turned over to the court for *in camera* inspection Begendorf's unsworn interrogation statement, and the court declined to make this available to the defense (Tr. P307-P308; App. 104a-105a; sealed Court Exhibit F).

On December 12, 1958, petitioner's counsel moved to take Begendorf's deposition (Tr. P360-P380; App.

105a-114a), basing his motion in part on the court's inherent power to make inquiry in the interests of justice and to assure a fair trial, and stating that "one, if not the main defense that we contend in this case, is that the defendant Genovese was framed, that he is not guilty of the crime charged against him" (Tr. P373; App. 108a-109a). The motion was supported by Genovese's affidavit (App. 1167a-1173a). The Government's opposition was supported by Government affidavits, including Begendorf's (App. 1181a-1188a). Not one of the Government's affidavits, including Begendorf's, offered any explanation of why Begendorf had sought out and visited Genovese, nor any statement as to whether Begendorf was in possession of any information pertinent to the question whether there was some frame-up or other impropriety connected with the Government's case. At a hearing on the motion (Tr. P428-P452-A; App. 114a-131a), petitioner's counsel argued the importance of permitting an inquiry, stressing again the need for ascertaining facts relevant to the contention that Genovese had been "framed" (Tr. P438; App. 121a), and stating, as a hypothetical example of the matters to be inquired into, the question whether Begendorf had come with any purpose such as to say something like this (Tr. P440; App. 123a):

> "Mr. Genovese, I have a statement of a witness for the Government who prior, when he was inquired of, exonerated you, but has since because of any pressure, because of pressure put upon him by the Government, changed his story. The statement has been destroyed and will not be used, or I will sell it to you for a price."

Counsel further stated that Genovese and the two women witnesses were present and ready to testify and

be cross-examined, if the court directed such an inquiry; and urged that a hearing be held promptly (Tr. P446, P452; App. 126a, 131a). The United States Attorney opposed holding an inquiry; and he represented that Begendorf, when a narcotics agent, did not work on this case, although he acknowledged Begendorf must have had contact with agents who were working on the case (Tr. P445; App. 126a). The judge on December 30, 1958, denied the motion (Tr. P495-507a; App. 131a-138a).

During the trial, on January 23, 1959, counsel for two other defendants received in the mail from an anonymous source, and promptly so informed the court, what proved to be genuine copies of portions of two reports (April 14 and May 5, 1958) by Narcotics Agent Enright, who was in charge of the Special Squad dealing with narcotics investigations. These reports contained a statement that Begendorf was assigned to the Special Squad—a statement which the Government then stated by affidavits (including one from Enright) to have been somewhat incorrect, although the Government acknowledged that Begendorf had been present in the Special Squad's room with Agent Flynn, who had been assigned there. The Enright report excerpts also contained a statement to the effect that Cantellops had testified before the grand jury, that Assistant United States Attorney Walsh had examined the grand jury minutes and there were certain inaccuracies which had to be cleared up, and that Cantellops was going to be taken before the grand jury to clear up those inaccuracies. The incident led to a further application by counsel to take testimony of Begendorf, and Enright too, outside of the hearing of the jury. This application the Government

opposed (Tr. 1113A-1113-U, 1411-1432a, 3993-4003; App. 237a-253a, 394a-410, 862a-869a, 1160a-1188a). As before, the papers filed and representations made by the Government contained nothing which offered any explanation of Begendorf's visit to Genovese, and nothing as to whether Begendorf possessed any information pertinent to the question whether there was some frame-up or other impropriety connected with the Government's case. The judge nevertheless denied the motion (Tr. 4003; App. 869a).

The "Jencks" Issues. The trial was beset by numerous problems arising out of *Jencks* v. *United States*, 353 U.S. 657, and its statutory aftermath, 18 U.S.C. § 3500. The judge sought to deal with these by examining various statements and reports *in camera*—a procedure subsequently approved in *Palermo* v. *United States*, 360 U.S. 343, 354. In some instances the judge held voir dire inquiries to obtain factual information for determining whether the particular document, or portions thereof, did or did not come within the Jencks Act's definition of "statement". Defense counsel made repeated demands for Government agents' reports. To the extent the judge refused these, he sealed the withheld portions as Court exhibits for appellate review.[8]

Being unaware of the contents of what the judge withheld, counsel are hardly in a position to gauge

[8] Thus, in addition to the withholding of reports, or portions thereof, relating to the witness Cantellops, the record shows that the trial judge withheld portions of reports relating to the following witnesses: Marino (Tr. 322-333; sealed Court Exhibit O); Agent Schrier (Tr. 775-776; sealed Court Exhibit Q-1); Basile (Tr. 3968-3970, 4135-4160, 4287-4292; sealed Court Exhibit JJ); Agent Dukas (Tr. 4489-4491; sealed Court Exhibits KK and LL); Agent Zamosky (Tr. 4602-4604, 4636; sealed Court Exhibit NN).

the full extent, or the full prejudicial effects, of any errors the judge may have committed in this connection. In view of Cantellops' central role and the issues raised as to his credibility, attention is particularly invited to this phase of the Jencks problems.

The prosecutor initially indicated he was in possession of one Cantellops' statement which he would be glad to turn over (Tr. 1392, 1395-1396). This was done (Tr. 1479); it consisted of a Question and Answer statement dated October 10, 1957, and was represented by the prosecutor to be "the only stenographic transcript that was made" (Tr. 2221, 2294-2296; App. 544a, 576a-578a; Gigante and Evola Exhibit L). However, the prosecutor took the position that none of the Government agents' reports relating to Cantellops came within the Jencks Act (Tr. 1479); the judge accordingly requested they be furnished him for *in camera* determination (Tr. 1479-1480, 1591-1593, 1610, 1615). The prosecutor then furnished the judge six or seven large files with the representation that they were all the files of the Bureau of Narcotics relating to this case (Tr. 2018, 2044-2045; App. 484a); the judge spent 30 hours reading the files and said he culled out every statement and every report dealing with Cantellops (Tr. 2018, 2052; App. 484a); he then conducted a voir dire inquiry concerning a few reports (Tr. 2011-2059; App. 480a-492a). After such inquiry, the judge refused to make available to the defense Agent Enright's report dated June 30, 1958 (Tr. 2013-2018; App. 480a-484a); he likewise refused to make available certain portions of two reports by Agent Matuozzi (Tr. 2019-2025; App. 485a-488a), of six reports by Agent Consoli (Tr. 2030-2038), of another report by Agent Enright dated April 14, 1958 (Tr. 2039-2042; App. 490a-492a).

of two reports by Agent Muglia (Tr. 2042-2044). The portions which the judge ordered turned over, on the ground that they were substantially verbatim accounts of what Cantellops had said to Government agents, were in fact turned over to the defense, and the full unexpurgated version was handed up to the judge to be sealed as a Court Exhibit (Tr. 2063, 2177, 2264-2267).

A further voir dire related to certain reports by Agent Rowan (Tr. 2857-2858, 3159-3174). Cantellops' own testimony on cross-examination showed Agent Rowan had interviewed Cantellops on numerous occasions before the trial, during the period when Cantellops' story was going through successively shifting versions.[9] After the voir dire the judge directed that isolated fragments of four Rowan reports be turned over to the defense, as containing substantially verbatim accounts of what Cantellops had said, but the bulk of these reports was withheld (Tr. 3172-3174, 3265; sealed Court Exhibit FF). During the voir dire Agent Rowan testified he had made notes from which he had dictated the four reports, and that the notes were not still in existence; but the judge, though so requested by defense counsel, refused to ask Agent Rowan whether those notes had been destroyed (Tr. 3170).

Thereafter, the prosecutor stated the Government had found another Question and Answer transcript of an interview with Cantellops, this one dated January 16, 1958, which had "turned up", and that accordingly

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[9] Tr. 1557-1558, 1583-1590, 1631, 1830-1836, 1907-1911, 2209, 2217-2218, 2292, 2321, 2351-2352, 2867-2868, 2942-2943; App. 421a-422a, 429a-432a, 438a, 465a-466a, 538a, 541a-542a, 575a, 592a-593a, 609a, 764a-765a.

the Government was turning this over to the defense (Tr. 3266-3269, 3285-3288A, 3601-3611; App. 810a).

On cross-examination Cantellops acknowledged that on various occasions when he had been questioned by Government representatives before the trial, notes were being taken (Tr. 1583-1590, 1907-1911; App. 429a-432a, 465a-467a). Cantellops also acknowledged that "around July 1957" he had been interviewed in the Assistant United States Attorney's office, and that it appeared to him the ladies who were present were taking down in shorthand all the questions that were being asked and the answers that he was giving (Tr. 2218-2221; App. 542a-544a); but the United States Attorney said he did not have possession of any such statement (Tr. 2221; App. 544a), nor did he have knowledge of the existence of any stenographic notes of such a statement (Tr. 2268; App. 566a).

In connection with the appeal the various sealed exhibits went to the Court of Appeals;[10] but there is nothing in the Court of Appeals' opinion which in any way indicates that the Court of Appeals examined the sealed exhibits to satisfy itself whether the trial judge's numerous rulings, made on the basis of his *in camera* inspection, were correct or were unduly restrictive.

During the trial there occurred other seriously prejudicial incidents which also operated to deprive petitioner Genovese of a fair trial; these are discussed at pages 41-47, *infra*.

At the close of the Government's case, petitioner Genovese's motion for judgment of acquittal was denied (Tr. 5730-5749, 5913; App. 934a-947a, 981a-982a).

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[10] It is understood that they have now been transmitted to this Court by the Court of Appeals.

The judge acquitted one defendant, Vento (Tr. 6111). At the close of the entire case, Genovese's motion for acquittal was renewed (Tr. 6129-6132; App. 1012a-1013a) and decision was reserved. The jury acquitted Fiano and convicted all other defendants (Tr. 7240-7243; App. 1146a-1148a). Genovese's motion for a new trial, or in the alternative for judgment of acquittal, was duly filed, was argued, and was denied (Tr. 7351, 7382-7388, 7453-7464; App. 1152a-1156a; pages A-37 through A-44 of Appendix A to this Petition). Genovese was sentenced to fifteen years imprisonment and $20,000 fine (Tr. 7608; App. 1158a). The Court of Appeals affirmed all the convictions, except that of Rodriquez (Appendix A).

REASONS FOR GRANTING THE WRIT

Separately, and even more so in the aggregate, the issues presented by this Petition involve fundamental questions concerning the standards of justice and of fairness applicable to federal criminal trials. They are issues important not only to this case but to many other cases, and they call for review and determination by this Court.

I

The barrage of severely prejudicial adverse publicity, both before and during the trial (see pages 5-17, *supra*), went to most unusual excesses and had enormous impact on petitioner Genovese's right to a fair trial. The broadside statements which the newspapers carried from the then United States Attorney Paul W. Williams, at the time of petitioner's arrest and arraignment, in large measure stripped petitioner Genovese of the presumption of innocence and spread

throughout the New York metropolitan area a pronouncement of guilt before the trial took place. Spurred on by initial prejudicial accounts emanating from such an official source, the press indulged in a course of recurring denunciation which completely eroded the right to a fair and impartial trial.

This is exactly the kind of situation where, for example, the change-of-venue provision of the Federal Rules of Criminal Procedure, Rule 21(a), was intended to afford a remedy. As the Advisory Committee's Notes state, the purpose of Rule 21(a) is to allow transfer of the case where "so great a prejudice exists against the defendant that he cannot obtain a fair and impartial trial in the district or division where the case is pending." This Rule the courts below have virtually turned into a dead letter. And by denying all the types of relief—change of venue, severance, mistrial, new trial—which were sought by petitioner to overcome the unfair effects of the widespread and successive prejudicial publicity occurring both before and during the trial, the courts below have harmfully lowered the standards of justice in the federal courts.

Issues concerning the relation between freedom of the press and the right to a fair trial unquestionably "bear on some of the basic problems of a democratic society." (opinion of Mr. Justice Frankfurter in *Maryland* v. *Baltimore Radio Show*, 338 U.S. 912, 919). In this case we are not dealing with the more limited power of review which this Court possesses over criminal trials in the State courts (compare *Stroble* v. *California*, 343 U.S. 181, with *Shepherd* v. *Florida*, 341 U.S. 50), but rather with the broader power and responsibility of this Court in the exercise of its

"supervisory power to formulate and apply proper standards for enforcement of the criminal law in the federal courts". *Marshall* v. *United States*, 360 U.S. 310, 313. At least in federal trials the trial court has a duty to grant relief from the effects of seriously prejudicial publicity not only where particular jurors admit to having formed an opinion, as in *Juelich* v. *United States*, 214 F.2d 950 (5th Cir. 1954), but in other cases where there has been generated an atmosphere of prejudicial publicity severely damaging to the defendant. *Delaney* v. *United States*, 199 F.2d 107 (1st Cir. 1952); *Briggs* v. *United States*, 221 F.2d 636 (6th Cir. 1955). The actions of the courts of the Second Circuit in the present case are in basic conflict with the principles expounded by the First and Sixth Circuits in the *Delaney* and *Briggs* decisions, just cited.

Evil consequences of prejudicial publicity are greatly magnified in a case like the present, where apart from this problem there exist all the customary difficulties of assuring a fair trial in a mass conspiracy case (see Mr. Justice Jackson's concurring opinion in *Krulewitch* v. *United States*, 336 U.S. 440, 445); and where the Government's entire supposed proof to connect petitioner Genovese with the alleged narcotics conspiracy was to come from the uncorroborated testimony of the single witness Cantellops whose credibility was so seriously in issue. As the First Circuit said in the *Delaney* case, *supra*, 199 F.2d at 112-113:

> "One cannot assume that the average juror is so endowed with a sense of detachment, so clear in his introspective perception of his own mental processes, that he may confidently exclude even the unconscious influence of his preconceptions as to probable guilt, engendered by a pervasive pre-

trial publicity. This is particularly true in the determination of issues involving the credibility of witnesses."

In his post-verdict oral opinion the trial judge relied heavily on—and to some extent overstated[11]—various cautionary measures he had taken (see pages A-32 through A-37 of Appendix A to this Petition). But, as the First Circuit made clear in the *Delaney* decision, *supra*, 199 F.2d at 112-113, in a case where the prejudice has been this far-reaching, such cautionary measures are no substitute for a fair trial even if the trial judge "conscientiously did all he could". Moreover, the fact that here the trial judge said, with reference to the numerous prejudicial articles published during the trial, that "Taken individually these articles are innocuous" (see page A-33 of Appendix A) manifests a shocking lack of comprehension on his part concerning the entire nature of the problem.

An additional reason for granting the writ in order to review this issue arises out of the Court's recent grant of certiorari, on February 23, 1960, in *Irvin* v. *Dowd*, No. 722, where somewhat parallel issues as to bias, prejudice and excitement in the community will be before the Court for consideration. *Irvin* v. *Dowd* has certain differentiating features, since some of the jurors there admitted to having a preconceived opinion on the basis of the hostile publicity. Nevertheless the case of petitioner Genovese presents even stronger grounds for review, particularly in view of the extent and severity of the prejudicial publicity here; the nature of this case and the slimness of the Government's supposed proof against petitioner Genovese; the role

[11] See Note on page A-35 of Appendix A to this Petition.

of the Government; the fact that the review here is on direct appeal, rather than (as in *Irvin* v. *Dowd*) by collateral attack; and the fact that this case involves a federal criminal trial, rather than (as in *Irvin* v. *Dowd*) a State prosecution where this Court must base its review merely on "the rock-bottom requirements of the due process clause of the Fourteenth Amendment" instead of applying the higher standards enforced in the federal courts. See *Delaney* v. *United States, supra*, 199 F.2d 107, 113. Also, it should be of aid in the proper discharge of this Court's appellate responsibilities to have the two cases under consideration at the same time since this could materially assist the Court in further developing and expressing the criteria respectively applicable in federal and in State criminal cases which involve important and recurring problems of this kind.

II

The issue as to the insufficiency of the evidence to sustain petitioner Genovese's conviction (Rule 29, Federal Rules of Criminal Procedure) involves not only the particulars of this case but also important general questions of law which at this time are deserving of full review by this Court.

As has been shown (see pages 17-22, *supra*), the Government's supposed proof to connect petitioner Genovese with this alleged narcotics conspiracy came solely and without corroboration from the testimony of Cantellops—a witness of exceptionally disreputable background who was named as a co-conspirator in the indictment and who, if his testimony were to be believed, was a leading participant in the alleged conspiracy.

The question whether accomplice testimony must be supported by some corroboration connecting the defendant with the offense has had a long and complex history in common law jurisdictions. Over a period of several hundred years the law's development on this subject has been generally in the direction of more rigorous standards; and in nearly half the States of the Union there are statutes which affirmatively prevent the trial judge from sending a criminal case to the jury on the basis of an accomplice's testimony unless some corroborative evidence connecting the defendant with the crime has been adduced. 7 Wigmore, Evidence § 2056; see, e.g., *People* v. *Wallin*, 32 Cal. 2d 803, 808-809, 197 P. 2d 734, 737 (1948); *State* v. *McLaughlin*, 250 Minn. 309, 84 N.W.2d 664 (1957); *People* v. *Malizia*, 4 N.Y.2d 22, 148 N.E.2d 897 (1958); *Goodwin* v. *State*, 307 S.W.2d 264 (Tex. Cr. App. 1957). The same rule prevails in some other States without the aid of statutory command. *Watson* v. *State*, 208 Md. 210, 217, 117 A.2d 549, 552 (1955); *Witham* v. *State*, 191 Tenn. 115, 122, 232 S.W.2d 3, 6 (1950). The policy reflected in those common law jurisdictions which require corroboration, whether by statute or decision or both, is based on extensive experience as to possible dangers and unreliability of accomplice testimony and on the need to insist, in the interests of fairness, upon the safeguard of some corroboration connecting the defendant with the offense.

In the courts of appeals of the various circuits there are numerous decisions[12] to the effect that corroboration

[12] *Bishop* v. *United States*, 243 F.2d 32 (D.C. Cir. 1957); *Benedicto Lebron* v. *United States*, 241 F.2d 885, 887 (1st Cir. 1957); *United States* v. *Stromberg*, 268 F.2d 256, 272 (2d Cir. 1959); *United States* v. *Migliorino*, 238 F.2d 7, 10 (3rd Cir. 1956); *Gormley* v. *United States*, 167 F.2d 454, 457-458 (4th Cir. 1948); *Lyles* v. *United States*, 249 F.2d 744 (5th Cir. 1957); *Poliafico* v.

is not required for accomplice testimony in a federal criminal trial.[13] These decisions are somewhat attenuated extrapolations from two opinions of this Court, *Holmgren* v. *United States*, 217 U.S. 509, 523-524, and *Caminetti* v. *United States*, 242 U.S. 470, 495. In *Holmgren* the ground of decision was that a requested charge was incorrect because it improperly assumed the witness to be clearly an accomplice; the Court went on to say: "It is undoubtedly the better practice for the courts to caution juries against too much reliance upon the testimony of accomplices, and to require corroborating testimony before giving credence to them". In *Caminetti*, the Court repeated what was said in *Holmgren* and then added: "While this is so, there is no absolute rule of law preventing convictions on the testimony of accomplices if juries believe them. 1 Bishop, Crim. Proc. 2d ed. § 1081, and cases cited in the note." It should be noted, moreover, that in *Caminetti* the conviction at least was supported by the testimony of two accomplices, rather than of one alone.

It seems fitting that this subject should now be re-examined by this Court from the standpoint of "the principles of the common law as they may be inter-

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United States, 237 F.2d 97, 115 (6th Cir. 1956); *United States* v. *Carangella*, 198 F.2d 3, 7 (7th Cir. 1952); *Esters* v. *United States*, 260 F.2d 393, 394 (8th Cir. 1958); *Audett* v. *United States*, 265 F.2d 837, 844-848 (9th Cir. 1959); *Johns* v. *United States*, 227 F.2d 374 (10th Cir. 1955).

[13] Thus the trial judge in the present case charged the jury (Tr. 7174-7175; App. 1132a-1133a):

> "There is no requirement in the Federal Court that the testimony of an accomplice be corroborated. Conviction may rest upon the uncorroborated testimony of an accomplice if you believe it and find it credible. . . . [An accomplice's] testimony, however, should be viewed with great caution and scrutinized carefully . . . ."

preted by the courts of the United States in the light of reason and experience". Rule 26, Federal Rules of Criminal Procedure; *Hawkins* v. *United States*, 358 U.S. 74. The problem is an important and recurring one in federal criminal trials. The federal courts in the various circuits have carried the non-corroboration doctrine to extreme lengths, and without even the safeguards which must have been contemplated by *Holmgren* and *Caminetti*.

Holmgren and *Caminetti* establish that during the past fifty years this Court's doctrine has been that it is "the better practice" to instruct the jury to require corroboration before giving credence to the testimony of an accomplice. It is difficult to understand why the lower federal courts have felt so free to depart from and to ignore such "better practice". Nor is it readily apparent why "better practice" should not equally require a case to be withdrawn from the jury and an acquittal directed if the accomplice's testimony is supported by no corroboration whatsoever connecting the defendant with the offense. A reexamination of the matter is called for, and is certainly appropriate under the evolutionary principles embodied in Rule 26. It seems evident from the decisions cited in note 12, page 35, *supra*, that any such reconsideration will have to come from this Court rather than from the courts of appeals.

A number of additional reasons make this a most suitable occasion for such reconsideration. The great expansion in the federal law of conspiracy—"that elastic, sprawling and pervasive offense" (concurring opinion of Mr. Justice Jackson in *Krulewitch* v. *United States*, 336 U.S. 440, 445)—necessitates a thoughtful assessment of the safeguards which in the light of

modern conditions are necessary and desirable to forestall serious miscarriages of justice. The present case presents the problem in unusually aggravated form, considering the nature of the testimony, the slimness of the Government's supposed proof against petitioner Genovese, the showing in the record as to the witness Cantellops, and the severity of the sentence. Unless some corroboration is required, almost anyone could be convicted in this kind of mass conspiracy trial if an accomplice witness like Cantellops chose to weave the name into the story; the possibilities for injustice and oppression would become immense, and the power put into the hands of the unscrupulous would be overbearing. Moreover, in recent years this Court has given renewed and enlarged recognition to a requirement of corroboration in other situations. *Weiler* v. *United States*, 323 U.S. 606 (perjury prosecutions); *Opper* v. *United States*, 348 U.S. 84 (extrajudicial admissions of a defendant); *Smith* v. *United States*, 348 U.S. 147, 151-159 (admissions of elements of offense which involves no tangible corpus delicti), where the danger of injustice appears to be no greater, and perhaps is less, than in situations of the type presented here; and the principles as to accomplice testimony should be considered anew in the light of these developments.

Even apart from any formulation of a universally applicable federal rule on the subject, the present case is of a type where the need for a requirement of corroboration connecting the defendant with the crime is exceptionally compelling, and hence should in any event be insisted upon before guilt is deemed proved beyond a reasonable doubt. *Kelly* v. *United States*, 194 F.2d 150 (D.C. Cir. 1952); *Wilson* v. *United States*, 271 F.2d 492 (D.C. Cir. 1959). The record in its entirety shows it would be a manifest injustice

to treat the flimsy evidence concerning petitioner Genovese's supposed connection with this alleged narcotics conspiracy as sufficient to sustain his conviction. This is underscored by what the record contains (see pages 18-22, *supra*) as to the unreliability and perjurious propensities of the witness Cantellops. Compare *Mesarosh* v. *United States*, 352 U.S. 1. This Court has just held that it is "a violation of due process to convict and punish a man without evidence of his guilt", *Thompson* v. *City of Louisville*, No. 59, decided March 21, 1960; and in the light of the *Mesarosh* decision, *supra*, this must certainly require that the evidence of guilt meet some minimum standards of proof and of credibility and reliability, which are wholly lacking in the present case.

III

The "Jencks" problems raised by this record (see pages 26-29, *supra*) have widespread significance.

Taking into account the nature of this case, the central role of Cantellops, the successive different versions of his story from the time of his arrest to the time he testified at the trial, and the fundamental issues as to his credibility, the interests of justice required that a reasonably full and fair disclosure be made to defense counsel of the prior statements Cantellops had given at different times to Government representatives. The need for such disclosure was further emphasized by the unexplained absence of certain notes or transcripts which the testimony indicated Government agents had made contemporaneously with some of their Cantellops interviews (see pages 28-29, *supra*). In this respect the case may well present problems closely related to those which must be considered by this Court in *Campbell* v.

United States, No. 766, certiorari granted, March 7, 1960.[14]

We say this case "may well" (rather than it "does") present such problems because counsel for petitioner have no way of knowing the contents of those reports, or portions of reports, which the trial judge withheld from disclosure and sealed as exhibits for possible appellate review. In such a situation, however, there would appear to be an inescapable obligation resting upon the Court of Appeals to examine the sealed exhibits in order to determine whether the trial judge was correct or incorrect in his various *in camera* conclusions as to which reports, or portions of reports, should be withheld from the defense; and an equal obligation for the Court of Appeals, after making such examination, to state explicitly that it has done so and what conclusion it has reached. That is what this Court did in *Palermo* v. *United States*, 360 U.S. 343, 355: "We have examined the statement and the record and find that the determination of the two courts below was justified". See also *Rosenberg* v. *United States*, 360 U.S. 367, 369. In the interests of fair and orderly procedure, certainly no less a duty rests on the courts of appeals; and indeed the Jencks Act contains an affirmative command that in the event the defendant appeals, the entire text "shall be made available to the

[14] The order granted certiorari with respect to the following question:

> "Whether production of a statement which was read and signed by a government witness is excused after a complete foundation for it is made under 18 U.S.C. 3500 on the ground that the only document in the possession of the prosecutor is a summary by an F.B.I. Agent and not the statement signed by the witness without any showing as to what became of the original statement."

appellate court for the purpose of determining the correctness of the ruling of the trial judge". 18 U.S.C. § 3500(e). In this way the somewhat one-sided procedure contemplated by the Jencks Act can nevertheless be utilized to preserve both justice and the appearance of justice.

Here there is nothing in the Court of Appeals opinion to indicate that the sealed exhibits received the slightest examination by the Court of Appeals, or that the Court of Appeals gave any consideration to or reached any conclusions concerning the correctness of the trial judge's actions on these reports.

Last term the procedures which trial judges should follow in making *in camera* determinations under the Jencks Act were stated by this Court. *Palermo* v. *United States, supra*, 360 U.S. at 354. It is a matter of general importance to the administration of justice, and it would be a most salutary adjunct to those procedures, if this Court were now to make equally clear the minimum standards of procedure which should be followed by the courts of appeals when such a case comes up on direct appeal.

IV

In various other respects the record shows petitioner Genovese has been deprived of a fair trial. Some of these (such as the court's refusal to direct that the Government allow one of the defense counsel to interview Cantellops; the "Fiano outburst"; and other matters) are dealt with in petitions for certiorari which other defendants in the case have filed or are filing, and are incorporated here by reference and relied on. There are three particular matters which, in the context of this case, manifest especially

grave departures from the proper and usual course of judicial proceedings, thus providing strong additional reasons for review of the case by this Court.

A. *Court's Failure to Make Inquiry into the "Frame-Up" Question.* The Begendorf-Enright incidents (see pages 22-26, *supra*) involved occurrences sufficiently unusual, on the part of at least one Government agent, to require the court to make an inquiry to safeguard the basic integrity of the judicial process. The judge should have promptly held or authorized an inquiry, under oath and subject to cross-examination, to find out the real facts concerning Begendorf's purposes and information; to find out what, if anything, Begendorf knew about any frame-up or other impropriety in connection with the case. The Court of Appeals said such an inquiry "would have served no purpose but to delay the trial" (see page A-29 of Appendix A). But there was ample time, for example, to make the inquiry between December 12 and December 30 without even delaying the start of the trial. In any event, the Court of Appeals comment assumes such an inquiry would have established that Begendorf did not possess any information relevant to frame-up or other impropriety or imposition on the court. There was no rational basis for the trial judge to make any such assumption, without first taking the steps to find out. Moreover, the kind of inquiry proposed clearly should have been held initially, as requested, outside the hearing of the jury. Compare *Nardone* v. *United States*, 308 U.S. 338, 341-343. In the context of this case, what the trial judge did, by reflecting "hostility . . . to the whole scope of the inquiry" (*Nardone* v. *United States, supra*, 308 U.S. at 343), was to shut off a line of inquiry which was indispensable to doing

justice. If the trial judge, as requested, had launched a suitable inquiry into the "frame-up" question either before or during the trial, then possibly there would have been a more prompt uncovering of some of the new matters which recently have come to light concerning the complete unreliability and falseness of certain testimony given by Cantellops at the trial. See pages 47-50, *infra*, and Appendix D to this Petition.

B. *Prejudicial Unfair Tactics by Prosecutor in Summation.* Because Cantellops' credibility was a principal issue at the trial, the question whether any promises or inducements had been held out to him in return for his testimony assumed critical importance. Compare *Napue* v. *Illinois*, 360 U.S. 264. Cantellops vigorously denied there had been any such promises or inducements (Tr. 1633-1634, 1965-1972, 2597-2598; App. 439a, 472a-473a, 703a). In his summation the United States Attorney indulged in vouching for the witness Cantellops (Tr. 6752-6761) to a degree which goes far beyond anything this Court said to be permissible in *Lawn* v. *United States*, 355 U.S. 339, 359, Note 15. More than that, the United States Attorney in summing up saw fit to tell the jury, as part of the Government's argument that Cantellops was testifying truthfully, that once Cantellops had received the minimum sentence of three years and nine months in the New York State court (see page 18, *supra*), "nobody could get him off of that", and accordingly Cantellops could have no motive "to come in here and make up a story."[15] Surely when he said this to the jury the

[15] This part of the United States Attorney's summation reads as follows (Tr. 6757-6758):

"Cantellops made only one appearance before the grand jury before he appeared in March of 1958, and at that time,

prosecutor must have known how incorrect it was to assure the jury that nobody could "get him [Cantellops] off of that" minimum sentence, and must have known that there existed the definite possibility of executive action to reduce Cantellops' sentence. Indeed, shortly after the trial, and "at the request of the United States Attorney", the Governor of New York did in fact commute Cantellops' minimum sentence so that Cantellops could be released on parole.[16] Yet the prosecutor, by misleading the jury as to whether such a possibility existed, effectively diverted them from considering this factor when making their assessment of Cantellops' motives and credibility. Here then was a seriously misleading summing up which may well have enabled the Government to tip the scales, in the jury's minds, in the direction of their believing Cantellops. In addition, the United States Attorney improperly suggested to the jury, in summation, that Cantellops had implicated Genovese before the grand

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in March of 1958, Cantellops had already been sentenced. He had gotten his time.

"Now, if as counsel suggest, he got a minimum sentence, what point would he have, what motive would he have to come in here and make up a story? It would be much easier for him to do his time and not expose himself to this. The earliest he could have gotten out would be three years nine months, less time for good behavior. Nobody could get him off of that. So the consideration that he got, if you would believe counsel, it seems to me, would hardly be that which would make a man invent a story. He had gotten his time. He would be better off to keep quiet."

[16] See press release issued July 1, 1959, from the Governor's Office, set forth in Vol. IV, pages 48-50, of Certified Record of Proceedings in the Court of Appeals.

jury in some manner not brought out in the trial record in this case (Tr. 6904-6911). But while the prosecutor "may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." *Berger* v. *United States*, 295 U.S. 78, 88; *Viereck* v. *United States*, 318 U.S. 236, 248.

C. *Unfairness in the Judge's Charge.* The judge's charge to the jury was long (Tr. 7055-7182a, 7211-7215; App. 1052a-1138a, 1142a-1144a) and one-sided. Though giving lip service to the idea of a balanced submission, in fact it was just the contrary; and the one-sidedness was severely prejudicial because it centered on the vital issue of Cantellops' testimony. The judge's detailed marshalling of the Government's evidence occupies about eighty pages of transcript (see especially Tr. 7083-7160; App. 1070a-1122a), and must have appeared far more authoritative to the jury than the prosecutor's summation; "jurors are ever watchful of the words that fall from" the trial judge. *Bollenbach* v. *United States*, 326 U.S. 607, 612. In the course of this marshalling the judge mentioned Cantellops' name more than 250 times, mostly in a context of telling the jury what Cantellops had testified to, and in a manner which, when the charge is read as a whole, must certainly have left the jury with an exaggerated impression of Cantellops' veracity, even though the judge instructed that it was the jury which must determine credibility. In addition, when marshalling the Cantellops testimony concerning petitioner Genovese, the judge gave a partial resume of Cantellops' testimony

on direct examination[17]; he entirely omitted all reference to Cantellops' prior and fundamentally inconsistent grand jury testimony concerning Genovese which had been brought out on cross-examination[18] (although with respect to some of the other defendants he purported to marshal both sides of the testimony); and after thus referring to Cantellops' testimony on direct alone, the judge told the jury "it is from this evidence that you must determine whether or not Vito Genovese knowingly became a member of the conspiracy charged in the indictment". Although petitioner's counsel excepted to the judge's prejudicial omission of any reference to the cross-examination concerning Genovese, the judge nevertheless refused to correct or supplement his charge on this matter (Tr. 7129-7131, 7183-7186, 7211-7214; App. 1101a-1102a, 1138a-1140a, 1142a-1143a). To the severe prejudice of petitioner, the judge here violated the fundamental principle that any expression by the judge concerning the evidence "should be so given as not to mislead, and especially that it should not be one-sided". *Quercia* v. *United States*, 289 U.S. 466, 470.

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[17] Even as to the Cantellops direct testimony, the resume was prejudicially incomplete; the judge's charge stated Cantellops "testified that he had heard reference to the right man prior to meeting Genovese while at the 1955 meeting in Ralph Polizzano's home and from Gigante while on the way to Cleveland" (Tr. 7130; App. 1101a-1102a); but the judge omitted all reference to the part of Cantellops' direct testimony where, in describing what he said was a July 1956 trip he made to Cleveland with the defendant Gigante, Cantellops' account of his conversation with Gigante indicated that at that time "The Right Man" was not one of the people Cantellops then knew or even had heard about (Tr. 1183, 1208-1211; App. 288a, 291a-292a).

[18] See pages 21-22, *supra*.

In addition, for reasons already stated (see pages 34-39, *supra*), it was error for the judge to charge that accomplice testimony could suffice, without corroboration, for conviction; and it was further error for the Court to refuse the more detailed Genovese requested charge, based on a charge approved by the Third Circuit in *United States* v. *Kemble*, 197 F. 2d 316, 319, more adequately warning the jury concerning the possible motives of an accomplice witness like Cantellops (Tr. 6996-6997, 6143; App. 1048a-1049a; 1015a).

V

In any event, and even apart from all the foregoing reasons, the principles expressed in *Mesarosh* v. *United States*, 352 U.S. 1, require that petitioner Genovese's conviction be set aside, on the basis of information which has recently been furnished to the Government. This information is set forth extensively in Appendix D to this Petition, to which reference is made for the important particulars which have now come to light. It relates to the unreliability and perjuriousness of testimony given at this trial by the Government's principal witness Cantellops, who was, as already shown, the sole source of the Government's supposed proof to connect petitioner Genovese with this alleged narcotics conspiracy. See pages 17-22, *supra*.

From these items recently furnished to the Government it appears, first, that subsequent to the decision by the Court of Appeals Cantellops has made a major recantation of the testimony he gave at this trial, including recantation of testimony as to specific incidents which concern petitioner Genovese; that this recantation took place at a Church in the Bronx on January 27, 1960, in the presence of a priest, a notary

public and three attorneys; and further, that in the recantation by Cantellops at the meeting in the Church, Cantellops declared that his past false and untruthful testimony was suggested by agents of the Narcotics Squad (one of whom Cantellops identified by name) and by an Assistant United States Attorney at that time (whom Cantellops, when questioned at the meeting in the Church, declined to identify by name).

From the items furnished to the Government it appears, second, that independent new evidence has also been discovered in refutation of important segments of Cantellops' testimony at the trial; and this independent new evidence provides independent confirmation that Cantellops committed perjury at this trial. It appears further that, according to information contained in these items, at least some of this evidence refuting Cantellops' trial testimony now appears to have been known at the time of the trial to some representatives of the Government as a result of investigations which the Bureau of Narcotics conducted prior to the trial. Nevertheless, no hint of the existence of any such refuting evidence was given at the trial; and it can hardly be doubted that if this had been disclosed it would have been most destructive of the Government's proof and most destructive of the credibility of the Government's principal witness Cantellops.

Accordingly, the case in its present posture must be considered not only in the light of the *Mesarosh* decision, *supra*, but also in the light of the principles expressed in *Napue* v. *Illinois*, 360 U.S. 264, 269, where this Court stated:

". . . it is established that a conviction obtained through use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment, [citing cases]. The same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears. [citing cases]

"The principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness. . . ."

However flimsy the proof against Genovese might be deemed when considered on the basis of the trial record alone, now the Cantellops recantation and other new information concerning the falseness and perjuriousness of the trial testimony given by the Government's principal witness Cantellops shows beyond a doubt that—as this Court said of the witness Mazzei in *Mesarosh* v. *United States*, 352 U.S. 1, 9—Cantellops is a witness whose "credibility has been wholly discredited", that "no other conclusion is possible", and that "the dignity of the United States Government will not permit the conviction of any person on tainted testimony." See also *Kretske* v. *United States*, 350 U.S. 807. When such a situation is brought before this Court, the Judicial Code contemplates that this Court shall take such action "as may be just under the circumstances". 28 U.S.C. § 2106; compare *Petite* v. *United States*, No. 45, decided February 23, 1960. As this Court further said in the *Mesarosh* decision, *supra*, 352 U.S. at 14:

"The government of a strong and free nation does not need convictions based upon such testimony. It cannot afford to abide with them. The

interests of justice call for a reversal of the judgments below, with direction to grant the petitioners a new trial.'"

CONCLUSION

The materials in Appendix C make it abundantly clear that there must have been many people who for one reason or another desired to see petitioner Genovese sent to prison. It is exactly this kind of case which puts our system of justice to the test. It evokes a need for conscientious and disciplined fairness, and for care in safeguarding the defendant's rights against prejudice, against looseness in applying rules of proof, against an unfair trial, and against false or perjured testimony (whether such testimony is inspired by excess of zeal, or by corruption, or by psychiatric aberrations). In the respects shown, the present trial falls far short of the minimum standards required for the proper administration of justice in the federal courts. For the reasons which have been set forth, the petition for writ of certiorari should be granted, the judgment of conviction should be reversed, a judgment of acquittal should be directed to be entered, and the Court should order such other action as may be just under the circumstances.

Respectfully submitted,

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March 25, 1960

APPENDIX A

Opinions and Orders of Court of Appeals

and

Oral Opinions Rendered by District Court after Verdict

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 355—October Term, 1958.

(Argued September 15, 1959 Decided January 12, 1960.)

Docket No. 25682

UNITED STATES OF AMERICA,

Appellee,

v.

ALFREDO AVILES, CHARLES BARCELLONA, JEAN CAPECE, CHARLES DI PALERMO, JOSEPH DI PALERMO, NATALE EVOLA, VITO GENOVESE, VINCENT GIGANTE, DANIEL LESSA, NICHOLAS LESSA, ROCCO MAZZIE, CARMINE POLIZZANO, RALPH POLIZZANO, BENJAMIN RODRIQUEZ, and SALVATORE SANTORA,

Appellants.

Before:

LUMBARD, *Chief Judge*,

CLARK and MOORE, *Circuit Judges*.

Alfredo Aviles and fourteen other defendants appeal from jury convictions in the Southern District of New York, Alexander Bicks, *J.*, presiding, for conspiracy to violate the Narcotic laws, 21 U. S. C. §§ 173 and 174, and sentences ranging from five to twenty years imprisonment, alleging insufficiency of proof of a single conspiracy and various errors in the admission of evidence and the conduct of the trial. Affirmed as to all defendants, except Benjamin Rodriquez whose conviction is reversed.

JEROME J. LONDIN, Assistant United States Attorney, Southern District of New York, New York, N. Y. (S. Hazard Gillespie, Jr., United States Attorney, Herbert B. Greene, Mark F. Hughes, Jr., Robert Price and Robert E. Scher, Assistant United States Attorneys, on the brief) *for appellee.*

SAUL ROTH, New York, N. Y., *for appellant Afredo Aviles.*

ROY L. REARDON, New York, N. Y., *for appellant Charles Barcellona.*

ALBERT J. KRIEGER, New York, N. Y. (Theodore Krieger, on the brief) *for appellants Jean Capece, Joseph Di Palermo and Benjamin Rodriquez.*

ROBERT R. KAUFMAN, New York, N. Y. (Rudolph Stand, on the brief) for *appellant Charles Di Palermo.*

MAURICE EDELBAUM, New York, N. Y., *for appellants Natale Evola and Vincent Gigante.*

SOLOMON A. KLEIN, New York, N. Y. (Wilfred L. Davis, on the brief) *for appellant Vito Genovese.*

ABRAHAM H. BRODSKY, New York, N. Y., *for appellants Daniel Lessa and Nicholas Lessa.*

HENRY K. CHAPMAN, New York, N. Y., *for appellant Rocco Mazzie.*

DAVID SCHWARTZ, New York, N. Y., *for appellant Carmine A. Polizzano.*

ALLEN S. STIM, New York, N. Y., *for appellant Ralph Polizzano.*

HERBERT S. SIEGAL, New York, N. Y. (Osmond K. Fraenkel, on the brief), *for appellant Salvatore Santora.*

LUMBARD, *Chief Judge:*

Alfredo Aviles and fourteen co-defendants appeal their convictions for conspiracy to violate the narcotic laws, 21 U. S. C. Sections 173, 174 and sentences of imprisonment ranging from 5 to 20 years[1] after a three months' jury trial in the Southern District of New York. The indictment named a total of 37 defendants and 14 other co-conspirators, but only 17 defendants stood trial on the charge of conspiracy to import and smuggle narcotic drugs into the United States, to receive, conceal, possess, buy and sell the drugs; to dilute, mix and adulterate the drugs prior to their distribution; and to distribute the drugs. Judge Bicks granted the motion of defendant Vento for judgment of acquittal at the end of the case, and the jury acquitted defendant Fiano.

A summary of the evidence shows that there was ample support for the jury's finding of one overall conspiracy to import, distribute, purchase and sell narcotics in violation of law.

The testimony of the principal government witness, Nelson Silva Cantellops, shows that he first joined the conspiracy in March, 1955 and continued serving it in various capacities until July 1, 1957 when he was arrested. His testimony and extensive cross-examination consumed nineteen days of the trial. The government also called defendants Peter Contes, Joseph Basile, and Salvatore Marino who testified that they participated in the sale and dis-

[1] Charles Barcellona and Jean Capeve received five year sentences; Vincent Gigante and Ralph Polizzano received seven years; Carmine Polizzano—eight years; Alfredo Aviles, Natale Evola and Benjamin Rodriquez—ten years; Charles Di Palermo, Nicholas Lessa and Rocco Mazzie—twelve years; Daniel Lessa—fourteen years; Joseph Di Palermo and Vito Genovese—fifteen years; and Salvatore Santora—twenty years. In addition, fines of $20,000 each were levied on Joseph Di Palermo, Natale Evola and Vito Genovese.

tribution of drugs with various appellants, defendants and co-conspirators. The following chronological summary of the evidence of the conspiracy is based on the testimony of Cantellops unless otherwise stated.

In March, 1955 Cantellops attended a meeting at Al's Luncheonette at 34 East 4th Street, New York, with Charles Barcellona, Ralph Polizzano, Carmine Polizzano, Joseph Di Palermo and Anthony Colonna. Cantellops agreed to transport narcotics to Las Vegas for $1000. At the airport bus, while Barcellona was talking to Cantellops, an unidentified man handed Cantellops a package which he took to Las Vegas. In Las Vegas Carmine Polizzano met him and introduced him to the defendant Fiano to whom he gave the package later that evening. For this delivery of narcotics Cantellops was paid $1000 by Barcellona.

In June, 1955 Cantellops made a trip to Florida to pick up a shipmen of narcotics. Carmine Polizzano gave him a bus ticket and money and he went to Miami where he met Carmine Polizzano and drove to Tampa. When the rendezvous in Tampa was unsuccessful, Cantellops and Carmine Polizzano drove to Key West where outside the La Concha Hotel an unidentified man took a suitcase out of his pushcart and placed it in the back seat of the automobile in which Cantellops was waiting. After driving to Miami Cantellops took the train and delivered the narcotics to Ralph Ponzzano at the "plant" at 36 East 4th Street, next to Al's Luncheonette, as Carmine Polizzano watched from across the street. For this trip Joseph Di Palermo and Carmine Polizzano paid Cantellops $600 and later he also received an ounce of heroin as a tip.

Cantellops' third trip in August, 1955 took him to Chicago. Carmine Polizzano instructed him about the trip and gave him a package of narcotics from the trunk of a car parked in front of Al's Luncheonette. Cantellops took a bus to Chicago and the day after his arrival met Carmine Polizzano at a bar on Division Street where he was intro-

duced to a man who picked up the narcotics in the booth where Cantellops had placed them. Cantellops and Carmine Polizzano then drove back to New York and, at Joseph Di Palermo's direction, Carmine Polizzano paid Cantellops. Following the Chicago trip, in August and September, 1955, Cantellops distributed narcotics for Ralph Polizzano.

In October, 1955 Carmine Polizzano asked Cantellops to pick up narcotics in Miami. He told Cantellops that if narcotics were not available in Miami he might have to go to Havana to see certain people. Cantellops went to Miami and at the La Concha Hotel met Charles Di Palermo who introduced him to a man named "Cuba." The three men then drove to the La Concha Hotel in Key West and the next day, upon directions from "Cuba," they picked up a suitcase of narcotics in "Cuba's" hotel room and brought the narcotics to New York by train. Back in New York Cantellops delivered the narcotics to Ralph Polizzano at the basement entrance of Al's Luncheonette upon directions from Carmine Polizzano. For this trip Cantellops was paid $250 by Joseph Di Palermo and $350 by Carmine Polizzano, who also arranged for his assistant, John Russo, to give Cantellops an ounce of heroin as a tip.

In October, 1955, upon Carmine Polizzano's directions, Cantellops explored the policy banks in the Eldridge Street area on Manhattan's lower East Side to find out whether these banks might be used as a front for narcotics distributing plants. After Cantellops had explored the policy banks, Carmine Polizzano invited him to a meeting at Ralph Polizzano's apartment on East 4th Street. This meeting was attended by Ralph and Carmine Polizzano, Joseph Di Palermo, John Russo, John Ormento and Benjamin Levine. The group discussed taking over and operating policy banks as a cover for the distribution of narcotics. Cantellops reported that it would cost between $100,000 and $150,000 to purchase the banks in the Eldridge Street area. The group reached no final decision as it was stated that

the matters would have to be discussed with "The Right Man," who, as Cantellops' testimony later developed, turned out to be appellant Vito Genovese. The meeting also discussed the possibility of importing narcotics through Puerto Rico because of turmoil in Cuba and recent misfortunes respecting two shipments by boat. Cantellops suggested the use of the Island of Vieques, off Puerto Rico, as a distributing point.

During the early part of 1956, at the request of Joseph Di Palermo and Carmine Polizzano, Rosario Colletti delivered narcotics to Cantellops who in turn delivered them to John Gonzalez, alias Guayamita, at Gonzalez's apartment at 793 Ninth Avenue, where they were diluted for resale. In June 1956 Cantellops took over Gonzalez' operations and Joseph Di Palermo and the two Polizzanos arranged for Ralph Polizzano to supply Cantellops with the narcotics necessary to expand this business in the Spanish speaking market. Cantellops called Ralph Polizzano when he needed drugs and he picked them up from Russo at Al's Luncheonette or nearby places. While picking up narcotics at the East 4th Street plant Cantellops saw Ralph Polizzano and Charles Di Palermo diluting narcotics. On two occasions during 1956 when Cantellops was in the East 4th Street neighborhood, he saw Vito Genovese talking to Carmine Polizzano and on one of these occasions when Cantellops approached, he was told by Carmine Polizzano "never to interfere when he was talking to 'The Right Man.'" In the summer of 1956 Cantellops, at Ralph Polizzano's request, made other local deliveries of narcotics.

In July, 1956, Cantellops made his fifth out-of-town trip, this time to Cleveland at the behest of Ormento and Carmine Polizzano. Carmine Polizzano introduced Cantellops to appellant Vincent Gigante who drove Cantellops to Lorain, Ohio. At Lorain, Cantellops took the narcotics from behind the spare tire in the automobile trunk and then took them by bus to Cleveland. In Cleveland he met Charles Di

Palermo and he delivered the narcotics to an unidentified woman in a taxicab. After Cantellops returned to New York Carmine Polizzano arranged for him to meet Ormento and in Mazzie's presence Ormento paid Cantellops for the trip.

In August, 1956, a sale by Colletti to a narcotic agent resulted in the arrest of Colletti and Russo and the latter was replaced by the defendant Salvatore Marino who thereafter handled narcotics deliveries for the Polizzanos, at the Squeeze Inn Bar, the plant at 36 East 4th Street and Al's Luncheonette at 34 East 4th Street. Thereafter Marino made frequent deliveries of drugs to Cantellops.

In August, 1956, Cantellops made his third trip to Miami to pick up narcotics. Before the Miami trip there were discussions and meetings at which Ormento offered Cantellops $1,500 to pick up narcotics in Mexico. After Cantellops refused to do this, meetings were held with a man called "Mexican," Mazzie and Carmine Galante regarding the details of a trip to pick up drugs. Cantellops still refused to go to Mexico.

The following evening Cantellops went with Ormento, Mazzie, "Mexican" and the appellant Natale Evola to a restaurant on East 86th Street. Here Ormento spoke to Genovese and reported back to Cantellops that "The Right Man" wanted to take a look at Cantellops to see if he was all right.

After this Cantellops went to "Mexican's" hotel room somewhere on West 85th Street and discussed the trip to Mexico with the appellant Salvatore Santora, Evola, Mazzie, Ormento and "Mexican." Cantellops persisted in his refusal to go to Mexico but suggested that he go to Miami instead. As the change in plan involved a delay, Ormento gave Cantellops money to entertain "Mexican" in New York City, which Cantellops did for the next three days. After this Cantellops drove with "Mexican" to

Miami. The day after their arrival "Mexican" drove Cantellops to Pompano Beach, secured a suitcase in a motel, and gave it to Cantellops. Cantellops then returned to New York by train and later gave the bag to an unidentified man. For this trip Ormento and Mazzie later paid him $950. After this Cantellops made two deliveries of narcotics to Philadelphia. On the first occasion Cantellops delivered three or four pounds of narcotics to a lame man, with Mazzie watching the delivery from a distance. For this Ormento paid Cantellops $350 in the presence of Santora and Mazzie and told Cantellops that Santora would have another trip for him.

A few days later Carmine Polizzano arranged for Cantellops to meet with Ormento, Santora and Mazzie at which time Ormento asked him to deliver narcotics to Philadelphia for Santora. Cantellops was driven to Philadelphia and delivered the narcotics according to instructions. For the second Philadelphia trip Santora gave money to Ormento who gave it to Cantellops in the presence of Mazzie and Evola. In addition, Cantellops testified to making a Brooklyn delivery for the same group, for which he was paid by Ormento.

In August, 1956, defendant Contes ordered a large quantity of heroin from Nicholas Lessa and Cantellops delivered this to Contes at the request of Mazzie who paid Cantellops for the delivery. The testimony of Peter Contes tended to confirm these transactions.

A few days later Ormento and Mazzie twice sent narcotics to Daniel and Nicholas Lessa, using Cantellops as the messenger. Mazzie supervised the second delivery and Ormento paid Cantellops for both deliveries.

At the end of August, or early September 1956, Cantellops attended a meeting at Mazzie's home at 2332 Seymour Avenue in the Bronx where plans were made for extending the distribution of narcotics. Earlier in the evening Can-

tellops drove to a German restaurant on East 86th Street with Evola, Ormento, Galante and Andimo Pappadio. After Ormento made a telephone call, they all drove to the West Side Highway and met another car. Cantellops and Ormento entered the other car which was driven by appellant Gigante. Ormento introduced Cantellops to Genovese, who was sitting in the back seat, saying to Genovese "This man is doing a good job for us. He is helping us and doing a good job for us." Ormento told Cantellops "This is the Right Man." Genovese said to Cantellops that they "were going to a meeting where territorial control was to be discussed," that the people at the meeting were counting on Cantellops to help them and that Cantellops could earn some money by doing so. The two automobiles drove to Mazzie's home and everyone entered except Genovese and Gigante who stayed outside. Evola, Mazzie, Ormento, Pappadio, Galante and Cantellops discussed the distribution of narcotics in the Spanish market in the East Bronx by use of policy banks and sealing off the area to eliminate competing narcotics peddlers and policy banks so that they could control the narcotics traffic in this area. Evola and Pappadio thought that the plan would take a month or a month and a half to complete and the others agreed. After twenty or thirty minutes Genovese came in. He wanted to know "what was the decision in the plan, what they had in mind." When he was told about the discussion which had taken place, Genovese said that he needed this information because he wanted to know when to send his men into the area. Later, in the presence of Evola, Ormento, Pappadio and Galante, Cantellops was advised that he would be the contact man for the distribution of narcotics in this area. Cantellops later delivered narcotics in this area at Ormento's request.

In September, 1956, Ormento and Galante sent Cantellops to Puerto Rico for narcotics. In Puerto Rico he contacted someone named Laurensano who instructed him where to find one Perez on the island of Vieques. When

Cantellops met Perez he was given a double marine canvas bag containing narcotics. Cantellops advised Laurensano that he was sending the drugs to three fictitious persons in care of General Delivery, Post Office, New York, and Laurensano advised that he would inform Ormento. Cantellops then mailed the heroin in three packages from three separate post offices. When Cantellops returned to New York Carmine Polizzano arranged to have him meet Ormento who said the drugs had arrived and Ormento paid him for the trip.

After this Cantellops met with Joseph Di Palermo, "Cuba" and a man named Montanez, and Montanez advised that there would be no more shipments from Cuba to Miami and Key West for the rest of the year because of unsettled conditions in Cuba. This meeting took place just a few days before Cantellops was arrested in September, 1956, and he remained in prison until February, 1957.

According to the testimony of three customs inspectors, Joseph Di Palermo, Jean Capece and Salvatore Benanti visited Cuba for two days in November, 1956, and returned to New York on November 20. Jean Capece was searched by a customs inspectress who found $9,000 in new one hundred dollar bills hidden in an undergarment. Jean Capece gave three different stories regarding this money.

When Cantellops left prison in February, 1957, he resumed his narcotics dealings with the Polizzanos, the Di Palermos and Ormento. The appellant Alfredo Aviles became a customer and Cantellops and Marino delivered narcotics to him, Cantellops making his deliveries about once or twice a week from the East 4th Street plant. Aviles paid Cantellops who turned the money over to Ralph Polizzano or Marino and received $100 for each delivery. On one occasion, when Joseph Di Palermo was present, Cantellops saw Ralph Polizzano hand to Jean Capece the proceeds of one of these sales to Aviles. Later Aviles bought directly from Ralph Polizzano and Cantellops received com-

missions on the sales. Aviles in turn resold the drugs which he had purchased from Cantellops and Ralph Polizzano. Marino testified for the government and generally confirmed Cantellops' story about the deliveries and the dealings with Aviles.

Cantellops' fourth and last trip to Miami took place in April, 1957. Joseph Di Palermo and Carmine Polizzano instructed Cantellops to meet Charles Di Palermo in Miami. Carmine Polizzano provided Cantellops with a bus ticket and money and in Miami he met Charles Di Palermo and "Cuba" at the La Concha Hotel. The trio then drove to the La Concha Hotel in Key West. In Key West an unidentified man put luggage in the rear seat of their car and Cantellops and Cuba took this back to Miami in the bus. Here they met Charles Di Palermo and, after rearranging the luggage, Cantellops took the drugs back to New York on the train and delivered them to Carmine Polizzano at the plant on East 4th Street. Later Joseph Di Palermo and Carmine Polizzano paid him about $600 for the trip and he later was given a tip of an ounce of heroin by Marino on Carmine Polizzano's instructions.

At a meeting in May, 1957, in Ralph Polizzano's apartment, there was further talk about sealing up the Eldridge Street territory. Present were Ralph Polizzano, Joseph Di Palermo, Ormento, Cantellops and some friend of Bennie Levine. Cantellops was ordered to start buying up the Spanish policy banks and he attempted to arrange meetings between the owners of these banks and the Polizzanos. Meanwhile Cantellops continued to deliver narcotics for the Polizzanos from the East 4th Street plant until July 1, 1957 when he was arrested.

As we have pointed out, the government called numerous witnesses to corroborate directly and circumstantially the testimony of Cantellops. The three principal supporting accomplice witnesses were Marino, Contes and Joseph Basile, the latter being the same Joseph Basile who was a

government witness in *United States v. Stromberg*, 268 F. 2d 256, 262 (2 Cir. 1959). Marino testified to a delivery of drugs for Ralph Polizzano on July 5, 1957, and a few hours later the police seized the plant at 36 East 4th Street and found quantities of cocaine and heroin and materials used to dilute, package and distribute these drugs. Marino confirmed Cantellops' testimony about the plant at 36 East 4th Street and Al's Luncheonette as centers from which narcotics were distributed by various means. He testified that he delivered narcotics for Ralph Polizzano from the fall of 1956 until his arrest on July 5, 1957.

Peter Contes testified to narcotics transactions involving Daniel Lessa, Nicholas Lessa, Rocco Mazzie and John Ormento. Contes purchased heroin from Daniel Lessa some time later in 1955 or early in 1956 and paid him $900 in the presence of Mazzie and Ormento, after which Nicholas Lessa delivered the narcotics to him. After this Contes made further purchases from Nicholas Lessa in varying amounts up to $2,600. One of Contes' customers was his cousin, Charles Pappalardo, and several days after selling him heroin in April, 1956, both Pappalardo and Contes were arrested by federal agents who searched Contes' apartment at 318 West 49th St[illegible] and found heroin and paraphernalia for diluting and packaging narcotics.

Joseph Basile testified to narcotics dealings which began in August 1955 with the appellant Joseph Di Palermo whom he knew as "Joe Beck." Joseph Di Palermo offered to sell heroin for $8,000 a kilo and cocaine for $400 an ounce. Basile was arrested in November 1955 but jumped bail and went to Europe. When he came back in January of 1956, he ordered half a kilo of heroin and cocaine from Joseph Di Palermo for which he paid $2,000 upon delivery to him by Johnny DePietro, also known as "Johnny The Bug" and the balance of $1,500 at a later date. Basile disposed of the narcotics to his customers. Basile ordered more heroin a few days later at which time Joseph Di Palermo

told him that the "goods" came from "Big John" Ormento whom Basile knew. Basile paid Joseph Di Palermo $3,500 in advance for the narcotics which were delivered to him later by Benanti. On another occasion Basile met Joseph Di Palermo and Jean Capece by telephoning Jean Capece at a number which Joseph Di Palermo had given him. Basile ordered half a kilo of narcotics for which he paid $3,500. The narcotics were delivered to Basile in an automobile by "Johnny The Bug" in the presence of Jean Capece and Joseph Di Palermo. Basile took the narcotics to Schenectady and sold it to his customers. He stayed in Schenectady until his arrest on November 10, 1956, but meanwhile he purchased narcotics about once a month from Joseph Di Palermo by telephoning Jean Capece and giving her a message for Joseph Di Palermo or arranging to talk with him. On one occasion when Basile purchased heroin from Joseph Di Palermo, the package was delivered to him by Charles Di Palermo whom he knew as "Charlie Brody." Basile took the half kilo of heroin to Schenectady and sold it to his customers. On some occasions Joseph Di Palermo delivered narcotics to Basile in New Jersey at the Garden State Diner near the exit of the Garden State Parkway on Route 17.

None of the appellants took the stand before the jury and they called no co-defendant or alleged co-conspirator to rebut directly the strong case of the government.[2]

As in shown by the above summary of the principal testimony in the trial record of over 6700 pages, there was abundant evidence that all of the appellants, except Rodriquez, were part of one conspiracy to import, sell and

[2] Only five of the appellants called any witnesses, namely Carmine Polizzano, Mazzie, Gigante, Evola and Rodriquez. These witnesses testified principally regarding Carmine Polizzano's employment, Mazzie's home at Seymour Avenue in the Bronx, Cantellops and his visits to his family, and the Philadelphia neighborhood where Cantellops testified to making a delivery of drugs.

deliver narcotics. The principal conspirators according to the proof were Vito Genovese, John Ormento, Joseph Di Palermo, Natale Evola, Rocco Mazzie, Carmine Polizzano and Salvatore Santora, among others. Their sources of supply were from such people as James Laurensano, "Montanez," "Cuba" and "Mexican," in Cuba, Mexico and Puerto Rico. According to Cantellops' testimony, he himself went to Puerto Rico and mailed narcotics from there. Of course many of the principal actors not only took part in the importation and transportation of the narcotics, but they had to do with the distribution and delivery of them through others of the appellants such as Jean Capece, Charles Di Palermo, Ralph Polizzano, Vincent Gigante and assistants such as Nelson Cantellops, Salvatore Benanti, John Russo and Salvatore Marino who delivered to Joseph Basile, Peter Contes and William Rovira. The appellant Ralph Polizzano was concerned actively with many of the deliveries and pickups and he seems to have been more or less in charge of the plant and the activities centering around 36 East 4th Street and Al's Luncheonette. Others of the appellants such as Rocco Mazzie and the Lessa brothers, Daniel and Nicholas, had to do with distributing the narcotics to various minor outlets, such as the witness Peter Contes. Others in the group of minor distributors were the appellants Charles Barcellona and Alfredo Aviles.

While the proof is most abundant against those who were active in handling and distributing the narcotics to and from the East 4th Street plant, such as the Polizzano brothers and the Di Palermo brothers, the proof is also sufficient against those who were concerned with the planning and the strategy of the conspiracy and the expansion of its business such as Vito Genovese and Natale Evola.

Although there is no proof that Vito Genovese ever himself handled narcotics or received any money, it is clear

from what he said and from his presence at meetings of the conspirators and places where they met and congregated that he had a real interest and concern in the success of the conspiracy. We find upon all the evidence that there is ample proof of Genovese's participation in the conspiracy as one of its principal directing heads. That Genovese was called "The Right Man" by those actively dealing with the distribution of the narcotics and that he acknowledged the name is not without significance in view of his interest and participation in furtherance of the conspiracy.

From all that we have thus far said it follows that there was abundant evidence to implicate appellants Vito Genovese, Joseph Di Palermo, Charles Di Palermo, Carmine Polizzano, Ralph Polizzano, Rocco Mazzie, Natale Evola and Jean Capece. The appellants Daniel and Nicholas Lessa, Charles Barcellona and Alfredo Aviles, all purchased narcotics for resale from one or more of the central conspirators on numerous occasions. This was enough to make them participants in the conspiracy as it is clear that they knew the nature of the operation. Whether they knew its full extent and all of its activities and actors is immaterial. This leaves for further consideration the sufficiency of the evidence regarding the appellants Santora, Gigante and Rodriquez.

Ralph Santora was sufficiently implicated in the conspiracy by his attendance at several meetings as well as by his use of Cantellops to deliver narcotics to Philadelphia on two occasions, as mentioned above. It was not error for the court to deny the motion of Santora's counsel to strike out Cantellops' testimony about a meeting early in August 1956 in the "Mexican's" hotel room which was attended by Santora, Ormento, Evola, Mazzie, "Mexican" and Cantellops where they discussed a trip to Mexico by Cantellops to bring in narcotics. The trial judge

excluded overt act 15 of the indictment[3] from the jury's consideration, apparently because the proof was at variance as to the location of "Mexican's" hotel. Of course this did not require exclusion of the overt act and we do not understand on what theory the overt act was excluded, but in any event, the exclusion of overt act 15 did not render irrelevant and inadmissible the evidence relating to this meeting since the evidence was relevant to the conspiracy charge.

The court did submit to the jury 17 of the 28 overt acts alleged in the indictment. As there was ample evidence to warrant the jury in finding that one or more of these 17 overt acts was committed in pursuance of the conspiracy nothing turns on any failure of proof regarding overt act 15.

As to Vincent Gigante, we have already referred to his trip to Lorain, Ohio with Cantellops and narcotics for delivery in Cleveland. During the trip Gigante named a number of the alleged conspirators and asked whether Cantellops was acquainted with them. Cantellops complained to Gigante about the risks he was taking in dealing in narcotics. Upon arrival in Lorain, Gigante told Cantellops to get the "stuff" from behind the spare tire and take a bus into Cleveland. The only other evidence relating to Gigante placed him as the driver of the car in which Genovese, Ormento, and Cantellops traveled to the meeting mentioned above at which territorial control was discussed. Gigante apparently took no part in the conversation during this drive and he did not enter the house where the meeting was held. Gigante's participation in

[3] "15. Further in pursuance of the said conspiracy and to effect the objects thereof, in or about the month of July 1956, in the Southern District of New York, the defendants JOHN ORMENTO, ROCCO MAZZIE, NATALE EVOLA, SALVATORE SANTORA and co-conspirator Robert Roe had a conversation in a hotel on 85th Street, New York City, New York."

this second incident appears to be only as a chauffeur. But his trip to Lorain with Cantellops and his knowledge that narcotics were secreted in the trunk are clear evidence of his participation in the conspiracy. His statements during the trip to Lorain would seem to constitute sufficient evidence of his knowledge of the scope of the conspiracy and of the fact that his activity was in furtherance of a larger venture.

As to the defendant Benjamin Rodriquez, we are of the opinion that there is insufficient evidence of his knowing participation in the conspiracy to have warranted submitting the case against him to the jury. Rodriquez strenuously urges that as to him the record contains evidence only of a single isolated purchase of narcotics from Cantellops, and that that evidence, without any additional showing that he knew of the conspiracy of which Cantellops was a member or intended to join in it, is inadequate to convict him. We agree with this contention.

On direct examination, Cantellops testified that in the middle of September, 1955 he delivered narcotics to Rodriquez near the Progresso Bar in the Bronx. Rodriquez pointed out the person to whom Cantellops was to make the delivery and when they walked past each other he delivered the narcotics. When Cantellops gave testimony again about Rodriquez four days later, he testified about a delivery of drugs to Rodriquez's runner which he places as occurring in the spring of 1956. The only other evidence against Rodriquez was the testimony of a Treasury Agent that, when Rodriquez was arrested in his home on June 4, 1958, he found three cans of milk sugar and upon analysis one of these cans contained some quinine.

Upon cross examination Cantellops affirmed testimony given by him before the grand jury to the effect that he first delivered narcotics to Rodriquez in the spring of 1956. Cantellops' statement on this point was definite and thus it seems to repudiate his prior direct testimony re-

garding a September, 1955 delivery. Moreover, his testimony contained no clear statement that there was more than a single delivery to Rodriquez, and no suggestion of any conversation with Rodriquez or other manifestation to him by Cantellops which might have given Rodriquez knowledge as to how Cantellops obtained the narcotics.

A single act may be the foundation for drawing the actor within the ambit of a conspiracy. See, e.g., *United States* v. *Carminati*, 247 F. 2d 640 (2 Cir.), cert. denied 355 U. S. 883 (1957). But, since conviction of conspiracy requires an intent to participate in the unlawful enterprise, the single act must be such that one may reasonably infer from it such an intent. Thus, when two men join together to commit a single robbery, one may infer from their common participation in the robbery that they have conspired to commit the robbery. However, in a multiparty conspiracy of the sort revealed in the present case, with actors performing many different tasks in many places, the inference does not necessarily follow from one contact with one member of the conspiracy.

Rodriquez was not a regular customer of Cantellops, so far as appears from the evidence. We may assume that Rodriquez knew that the narcotics were illegally imported, but there is insufficient basis in the evidence for assuming that he knew that Cantellops was an agent for an existing conspiracy. So far as appears, Rodriquez had no knowledge whatever as to how Cantellops came into possession of the drugs.

The single purchase alone was not enough to prove that Rodriquez was a participant in the conspiracy. It was necessary to the government's case to submit evidence that Rodriquez knew of the conspiracy and associated himself with it. *United States* v. *Reina*, 242 F. 2d 302 (2d Cir.), cert. denied, 354 U. S. 913 (1957); *United States* v. *Koch*, 113 F. 2d 982 (2d Cir. 1940); *United States* v. *Peoni*, 100 F. 2d 401 (2d Cir., 1938). From evidence of

knowledge of the conspiracy and a transaction with one of its members it would be reasonable to infer intent to participate in it, but there was no such evidence of knowledge here. Nor was there evidence of a continuous course of dealing between Rodriquez and Cantellops, which might warrant the inference that Rodriquez had some knowledge of the character of the source from which his narcotics came.

We therefore reverse the conviction of Rodriquez and direct the dismissal of the indictment against him.

We now proceed to the consideration of the appellants' numerous claims of error regarding the admission of evidence and the conduct of the trial and rulings of the trial judge.

Cantellops' Prior Perjury and Its Effect on His Trial Testimony

Most of the appellants lay great stress on the character of the witness Cantellops and his admitted perjury before the Grand Jury. They argue that his testimony should have been stricken, that no defendant may be convicted on Cantellops' uncorroborated testimony, and that the indictment should have been dismissed. We do not agree. It was for the jury to judge the witness Cantellops on the basis of all that was brought out about his character, his previous activities, his statements to the government, his testimony before the Grand Jury and before the petit jury.

The jury was fully advised of how Cantellops told his story to government agents and the United States Attorney, of his several appearances before the Grand Jury and the changes and modifications in his testimony there. Cantellops testified for five days on direct examination and for fourteen days on cross-examination. The report of his testimony covers about 2,000 pages of the stenographic minutes. The government made available to de-

fense counsel Cantellops' Grand Jury testimony of 312 pages, two question and answer statements, dated October 10, 1957 and January 16, 1958, records showing Cantellops' visits to the United States Court House, the Veterans Administration's medical records regarding Cantellops, and Rikers Island medical records when the witness was there incarcerated in 1950 and 1953.

The fact that a witness testified untruthfully at a prior time does not require a finding that [redacted] testifying perjuriously at trial. *United States* v. [redacted]*olis*, 138 F. 2d 1002, 1004 (3 Cir. 1943). It is for the jury to say whether his testimony at trial is truthful, in whole or in part, in the light of the witness' demeanor, his explanations and all the evidence in the case. *United States* v. *Reina*, 242 F. 2d 302, 307 (2 Cir.), *cert. denied* 354 U. S. 913 (1957); *United States* v. *Lennon*, 246 F. 2d 24, 28 (2 Cir.), *cert. denied* 355 U. S. 836 (1957).

Nor is there any merit in the contention that Cantellops' admissions that some of his testimony before the grand jury was untruthful vitiated the indictment. The Supreme Court has held that an indictment is not subject to challenge by reason of the incompetence of evidence presented to the Grand Jury. "An indictment returned by a legally constituted and unbiased grand jury, like an information drawn by the prosecutor, if valid on its face, is enough to call for trial of the charge on the merits." See *Costello* v. *United States*, 350 U. S. 359, 363 (1956).

The further claim is made that the convictions should be reversed because it now appears that Cantellops testified falsely at the trial that no promises had been made to him in return for his testimony. In this connection, affidavits have been filed on this appeal pointing out that on July 1, 1959, three months after the conviction in this case, the Governor of New York commuted Cantellops' sentence for possession of narcotics. This commutation was granted at the request of the United States Attorney

because of Cantellops' assistance to the government in narcotics prosecutions. It does not follow from the action of the United States Attorney and the action of the Governor that any promise was made to the witness. It is a well understood practice for the prosecutor and the chief executive concerned to give appropriate consideration to witnesses who have assisted the government. The witnesses concerned are aware that this is so; the jurors and the general public are also aware of this practice. The purpose of the government is to encourage witnesses to tell what they know; that may be accomplished without prior promise in a particular case. Consequently we do not conclude from the fact of the Governor's commutation that Cantellops was testifying falsely when he disclaimed any promise. Surely it could have been no surprise to anyone that the witness was later shown some consideration; the jury knew that Cantellops hoped for such a result and that the jury gave this due weight can hardly be doubted in the light of the cross-examination on this subject and the arguments made by defense counsel in their summations.

The Interruption of Cantellops' Cross-Examination.

The appellants complain that the trial judge erroneously interfered with their cross-examination of Cantellops because the judge permitted the witness to speak to his young daughter at the end of one day and to speak to court-assigned counsel during recess on the following day. These rulings were well within the proper discretion of the trial judge. There was no showing that these talks had to do with the substance of the witness' testimony and the argument that they unduly interfered with the right to cross-examine, or were in any way prejudicial, has no substance whatever.

On February 10, in the midst of a four weeks cross-examination which began January 20, Cantellops was shown

a letter he had written his daughter in which he said he "intended" to be released from prison around Christmas 1958. Later that day the court was informed that Cantellops, fearing for his daughter's safety, wished to see her. Cantellops thereafter talked to his daughter on the telephone although he did not see her. Certainly, under these circumstances and in light of the exceptional length of cross-examination, it was well within the trial court's discretion to release Cantellops from sequestration to speak with his daughter. See *Kaufman* v. *United States*, 163 F. 2d 404, 408 (6 Cir. 1947).

The next day, following assertion by Cantellops that he was worried about his constitutional rights, the judge assigned Arnold Fraiman, Esq. as counsel and Cantellops conferred with him during recess the following day and advised him to answer certain questions which had been asked him. This course of procedure was entirely proper. No delay was involved; and the witness in fact answered all the questions asked him. The complaint of undue interference with cross-examination is frivolous. Indeed the court was exceedingly generous in the latitude it gave counsel in cross-examining Cantellops, even to the point of permitting considerable repetition and minute inquiry into many matters of doubtful relevance.

The Testimony of Ralph Polizzano's Admissions

Ralph Polizzano complains that the court should have granted him a mistrial because of the introduction of the testimony of James H. Gibbon, of the New York City Police Narcotics Squad, regarding admissions made by Polizzano to Gibbon. After hearing evidence, not in the jury's presence, the court rejected the claim that the admissions had been coerced.

Gibbon testified that after he arrested Ralph Polizzano on July 6, 1957, he went with Polizzano to his apartment #2 on the ground floor of 36 East 4th Street and that the

latter told him the "junk" was on top of the cabinet in a black zipper case, and that the cutting apparatus and scales were in another room.

Salvatore Marino then testified to making a delivery of narcotics from the apartment at 36 East 4th Street for Ralph Polizzano before his arrest the night of July 5. On cross-examination Marino claimed that in the police station he was punched in the stomach by the arresting officer and two other officers for five or ten minutes and was knocked out. He claimed he saw two or three other officers strike Ralph Polizzano in the stomach.

Not until this point in the trial did counsel for Ralph Polizzano move to exclude Gibbon's testimony of the oral admissions on the ground they were made under duress. Counsel asked for a hearing and for a mistrial if the court should find for Ralph Polizzano on these questions.

The trial judge could have denied the motions on the ground that they were untimely made. As it was, he granted a hearing at which Polizzano testified. From the discrepancies in the testimony of Marino and Polizzano, Polizzano's failure to complain earlier, his plea of guilty to a state narcotics charge based on the same facts, and the police medical records, there was ample reason for the judge to deny the motions as he did. Nevertheless he charged the jury that they were to disregard the admissions if they found them to have been made for fear of bodily harm, and that, in any event, they were to be considered solely against Ralph Polizzano. We find no error in these rulings.

Aviles' Postarrest Statement Regarding Ralph Polizzano

Ralph Polizzano also complains of the admission in evidence, over his objection, of an unsigned statement of appellant Aviles made after the latter's arrest on June 3, 1958. In this statement Aviles referred to a meeting with

"Ralph" at the Squeeze-Inn Bar, related that Ralph wanted him to buy stuff directly from him instead of the Spanish fellow who had introduced him and stated that the stuff he bought from Ralph was delivered by a man he called "Junior." When the judge overruled the objection to admission of the exhibit, Ralph Polizzano's counsel sought to have the name "Ralph" deleted or to have "a man" substituted, but this application was also denied. The judge did instruct the jury three times immediately preceding and following admission of the statement that it was to be considered only against Aviles and repeated this admonition twice in instructing the jury. We find no error in the admission of the statement in evidence in view of the judge's careful and repeated instructions.

The government may introduce admissions of one defendant even though other defendants on trial are implicated, provided the jury is carefully and clearly instructed that the admission can be considered only against the declarant. *Delli Paoli* v. *United States*, 352 U. S. 232 (1957); *United States* v. *Bando*, 244 F. 2d 833, 838-9 (2 Cir.), *cert. denied* 355 U. S. 844 (1957). While it might have been the better practice under these circumstances to have deleted the name "Ralph" from the statement before admitting it in evidence, so as not to run the risk of unnecessarily focusing attention on Polizzano, we see no reason to presume that the jury disregarded the judge's repeated instructions as to the use to be made of the admissions.[4]

Barcellona's Right to Counsel

Appellant Barcellona complains that he was denied counsel in violation of his right under the Sixth Amendment which guarantees that "In all criminal prosecutions, the accused * * * shall enjoy the right to have the assistance

[4] We do not overlook the fact that when the jury asked for the Aviles statement during its deliberations the trial judge directed the deletion of "Ralph" before sending the exhibit to the jury.

of counsel for his defence," and under Rule 44, Federal Rules of Criminal Procedure. We think appellant was adequately represented. It is true that Barcellona was without counsel from the time he appeared in the district court on July 16, 1958 until November 25, 1958, when the court assigned Roy Reardon, Esq. to represent him. But the trial did not commence until January 5, 1959 and thus his counsel had six weeks in which to prepare. This was ample assistance of counsel in view of the fact that Barcellona does not advise us in what respect he was prejudiced by his lack of counsel prior to November 25, 1959. Furthermore, he was given the benefit of all motions made by other counsel during pre-trial. So far as appears, all was done that needed to be done and could be done on his behalf. While there is language in the cases that an accused is entitled to counsel "for any part of the pretrial proceedings" this is always coupled with the qualification that there is no error unless "he is so prejudiced [by the absence of counsel] as to infect his subsequent trial with an absence of 'that fundamental fairness essential to the very concept of justice.'" *Crooker* v. *California*, 357 U. S. 433, 439 (1958).

Defendant's Fiano's Courtroom Outburst

On March 11, when the government was adducing evidence as to defendant Fiano's birthday, Fiano burst into a tirade before the jury in which he asserted that all those on trial were convicts and that some were then serving time in prison. All defense counsel immediately moved for a mistrial. In the course of these motions counsel for Jean Capece asserted that his defendant had no criminal record, which led to further motions for a mistrial. The appellants claim that the Fiano outburst was provoked by the government, but there is no warrant for this assertion. In the context of the questioning then in progress, Fiano's birthday was a relevant line of inquiry. Following the outburst, Judge Bicks promptly instructed the jury to disregard

Fiano's statements, and also told the jury that they were not to assume from the remarks of Capece's counsel that any other defendants had a criminal record. Manifestly it was not error to deny the mistrial motions. If such conduct by a co-defendant on trial were held to require a retrial it might never be possible to conclude a trial involving more than one defendant; it would provide an easy device for defendants to provoke mistrials whenever they might choose to do so. Under all the circumstances the trial judge's instructions adequately dealt with the situation and his denial of the mistrial motions was proper. See, e.g. *United States* v. *Stromberg*, 268 F. 2d 256, 269 (2 Cir. 1959); *Weistroffer* v. *United States*, 258 F. 2d 379, 392-93 (8 Cir. 1958), *cert. denied* 358 U. S. 927 (1959).

Double Jeopardy Claims of Daniel and Nicholas Lessa and Joseph Di Palerma

Appellants Daniel and Nicholas Lessa claim that the trial court should have granted their motions for acquittal on the ground that they were twice placed in jeopardy because they had already been convicted for the same acts in *United States* v. *Stromberg*, 268 F. 2d 256 (2 Cir. 1959). In that case the evidence showed that the Lessas received their supply from Vellucci, through runners Ewing and Tedesco, until Vellucci was arrested in November 1955. It was only after that that they turned to the defendant Ormento for their supply. Thus the Lessas, as dealers, simply purchased their narcotics supplies from two different and separate groups. The mere fact that several retailers purchase from separate suppliers at different times does not transform two separate conspiracies into one.

Analysis of the *Stromberg* record and comparison with the proof in this case shows that the two conspiracies were entirely different enterprises in all respects, their principals, the source of their drugs, the means and places

of importation, their distribution points, and the centers from which they operated in Manhattan.

Joseph Di Palermo, also indicted in the *Stromberg* conspiracy, likewise claims double jeopardy. As he was not placed on trial in *Stromberg* since he was then a fugitive, he has obviously not twice been placed in jeopardy.[5]

The Simultaneous Trial of 17 Defendants

The complaint that the individual defendants could not receive sufficient individual consideration at a trial of 17 defendants is without basis in fact or law. The question of how many co-defendants should be tried at one trial is within the discretion of the trial court and there is no support for the claim that that discretion was abused here. The rights of each defendant were scrupulously guarded by the trial judge throughout the trial. In the number of extra challenges allowed in the jury selection, the latitude of cross-examination, the one week allowed for defense summations, and the patience shown in listening to numerous motions of the many counsel, the trial judge was eminently fair to the point of being overgenerous. Moreover, the court's charge to the jury fairly summarized the evidence, distinguished the case of each defendant and emphasized the requirement of separate consideration of the case as to each defendant. Under these circumstances, there can be no complaint of prejudice from such a joint trial. See *United States* v. *Stromberg*, 268 F. 2d 256, 265 (2 Cir. 1959); *United States* v. *Bruno*, 105 F. 2d 921 (2 Cir.), rev'd on other grounds, 308 U. S. 287 (1939).

[5] The *Stromberg* proof showed that Joseph Di Palermo's only link with the conspiracy was Vellucci from whom he purchased heroin; he had no contacts with any of the principal *Stromberg* conspirators and he never had any contact with the Lessas so far as the proof in that case showed.

Rulings on Evidence

Appellant Genovese complains he was so prejudiced by testimony that he was seen emerging from an automobile on January 17, 1956 at Kenmare and Mulberry Streets in Manhattan as to have necessitated the granting of a mistrial as to him. This testimony was given by Sherman Willse, a member of the staff of the Senate Select Committee on Improper Activities, who in January 1956 was a New York City police officer. This testimony was stricken by the court[8] with clear instructions to the jury to disregard it, although the government stated that it was prepared to show that the automobile was at the time registered in the name of appellant Vincent Gigante.

We cannot see how Genovese was improperly prejudiced by this testimony. We have read it over and conclude that it was utterly meaningless by itself and devoid of the sinister import which appellants seek to attach to it. In any event the striking of the testimony and the court's instruction to the jury cured any possible error in admitting it. Our jury system is founded on the assumption that the jury will adhere to the trial court's instructions to it. See *United States* v. *On Lee*, 193 F. 2d 306 (2 Cir. 1951), aff'd 343 U. S. 747 (1952). Under the circumstances here present, there is no reason to presume that the jury disregarded the court's instruction.

Appellant Jean Capece complains of the admission of testimony of a customs official that she flew to Cuba on November 20, 1956 with Joseph Di Palermo and Salvatore Benanfi and upon her return two days later she had $9,000 in cash concealed in her brassiere. Coming after much evidence showing that Jean Capece worked with Joseph

[8] In our opinion the court erred in excluding the evidence which corroborated Cantellop's testimony of the relationship between Genovese and Gigante as it tended to show that Genovese was driven around by Gigante and it was near enough in time to the events in question.

Di Palermo in the distribution of narcotics, that Benanti was a runner for Di Palermo, and that two months earlier, in September 1956, Montanez had advised Di Palermo that no narcotics would be available from Cuba for some time because of the revolution, this testimony was relevant to corroborate Cantellop's story. Moreover, Benanti's use of a false name and address and Jean Capece's three different versions of how she came to possess $9,000 in one hundred dollar bills would hardly support the theory that the two day trip by air was for a vacation. On the contrary, the trip was persuasive independent evidence corroborating Cantellop's testimony, as it was reasonable to conclude that the three had gone to Cuba to purchase narcotics, although apparently with some lack of success.

We have dealt with the major claims of error advanced by the appellants. The other contentions have so little merit that they do not warrant any discussion. In our opinion Genovese's motions to inspect a statement taken by the United States Attorney from Customs Agent Benjamin Begendorf, for two reports of Narcotic Agent John Enright, and to take depositions of Begendorf and Enright were without the slightest foundation. Neither was called as a government witness and both were available to be called by the defense, who failed to call either. These motions seem to have had no purpose but to delay the trial. The trial judge exhibited commendable patience and courtesy in the face of such maneuvers.

On this appeal two of the defendants have been represented by assigned counsel, Roy L. Reardon for Charles Barcellona and Allen Stim for Ralph Polizzano. These counsel represented the same defendants at trial; in addition Martin Carmichael, Jr. represented Louis Fiano at trial. We commend them for their services so rendered and the high quality of their counsel.

With the exception of Rodriquez, the appellants have all been convicted after an eminently fair trial upon the

convincing evidence of several accomplices which evidence was corroborated in important details.

We affirm the judgments of conviction of all appellants, except Benjamin Rodriquez and we reverse his conviction and direct that the indictment be dismissed as to him.

Order of January 26, 1960

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA, *Appellee*,

v.

VITO GENOVESE, *Appellant*.

Petition for re-hearing or in the alternative for an order to stay the Court's mandate pending application for certiorari to the Supreme Court of the United States.

Solomon A. Klein and Wilfred L. Davis,
New York, N. Y., for appellant.

Petition denied.

J. E. L.
C. E. C.
U.S.C.JJ.

26 January 1960

Order of January 29, 1960

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA, *Appellee*,

v.

VITO GENOVESE, *Appellant*.

Petition for rehearing of denial of motion for rehearing and for stay of mandate.

Solomon A. Klein, New York, N. Y.
for appellant.

The petition is denied, treating these papers as a petition for rehearing of the denial of a motion for rehearing and for stay of the mandate.

J. E. L.
C. E. C.
U.S.C.JJ.

Jan. 29, 1960

Oral Opinion of District Court Rendered April 15, 1959, After Verdict (Tr. 7395-7404)

The Court: On numerous occasions throughout the trial motions were made on behalf of the defendant Vito Genovese for a mistrial or, in the alternative, for a severance on the ground that certain newspaper and magazine articles published during the course of this trial, and certain radio and television comments, created or tended to possibly create an atmosphere which allegedly made it impossible for the defendant to receive a fair trial.

The Court, after considering the publications which were handed up to it, denied the motions.

At the time of one such ruling, the Court indicated that it was preparing a written memorandum setting forth the reasons for those rulings. In lieu of the written opinion the Court will now orally set forth its opinion with respect to all of the said applications.

Applications of this nature are addressed to the sound discretion of the Court and whether they should be granted depends upon all the circumstances in each case.

In exercising that discretion the relevant circumstances to be considered in this case are, one, the nature and extent of the publicity complained of; two, the conduct of the voir dire examination; three, the admonition and charge to the jury; and four, the Government's responsibility vel non for the publicity in question.

In so far as the bases of the defendant's argument that the case against him was being tried in the press rather than in the courtroom, the contention is utterly devoid of merit. The articles in which the defendant Genovese's name appears mention him, with one exception, only incidentally. There was no attempt by the press to comment on the merits of the case tried here nor to state in connection therewith very much more than the fact that the defendant was then on trial.

Taken individually these articles are innocuous. Nor is there a reasonable basis upon which to find that the whole is greater than the sum of the parts. Even taken together, they do not create such an atmosphere of bias which would warrant granting the requested relief. The situation here is completely unlike the "trial by press" condemned in U.S. v. Delaney, the only reported case called to the Court's attention in this circuit dealing with that subject in which such relief was granted.

The voir dire examination commenced on January 5, 1959, and terminated on January 9, 1959. After careful and painstaking interrogation of approximately 160 veniremen, 12 jurors and 5 alternates were chosen.

On January 5, 1959, the very date upon which the voir dire examination was commenced, the Court inquired inter alia whether any juror had read, heard or seen any publicity about this case in the press, radio, television or otherwise. None of the panel answered in the affirmative, but one venireman, who did not thereafter become a juror, stated that he had "read one of the names of the defendants" but that it was not in connection with this case. This prospective juror further stated that this would in nowise interfere with his ability to render a completely fair and impartial verdict.

All of the veniremen who were sworn as jurors and alternates in this case replied in the negative to the foregoing questions which the Court propounded to them, and not one of them indicated that he or she had read the name of any defendant or had read anything about this case.

Also to be noted is that the Court, in the exercise of its discretion, afforded the apparently unprecedented total of 48 peremptory challenges to the defendants. That this was more than adequate to afford counsel the ability to select a jury satisfactory to them is amply borne out by the fact that they did not exercise all of the challenges allowed to them by the Court.

While the defendants were thus allotted 38 more peremptory challenges than the 10 required by Rule 24(b) of the Federal Rules of Criminal Procedure, it is to be noted parenthetically that the Government was restricted to the 6 challenges authorized by that rule.

Under the circumstances, the Court is satisfied that any pre-trial publicity concerning this case did not come to the attention of the jury. Moreover, during the course of the voir dire examination the Court made it abundantly clear to the panel of jurors that it was their duty to decide the case, when and if it was finally submitted to them, solely and only upon the evidence adduced at the trial.

The Court enunciated this thought from time to time throughout the trial in various forms, but always emphasizing that it was their sworn duty as jurors to decide this case, if and when it was finally submitted to them, solely and only upon what they heard in the courtroom, and that they must exclude from their deliberation anything other than the evidence that was adduced at the trial.

After the jury was sworn on January 9, 1959, the Court made an introductory statement in which it instructed the jury in part as follows:

"And lastly and importantly, do not read any newspaper comments upon this trial, nor listen to any radio or television broadcasts commenting on this trial. Obviously all the evidence in this case, whatever there will be, is to come out in this courtroom, and you will decide this case only upon such evidence or such intelligence that you require from the testimony in addition to such exhibits that are admitted in evidence in this courtroom."

The Court admonished the jury at the luncheon recesses and at the conclusion of each day's testimony that they were not to read any publications concerning this trial, that they were not to listen to any broadcasts or telecasts relating to the trial, that they were not to discuss, or remain

in the presence of anyone discussing the case, and that they were to keep an open mind until such time as the case was finally submitted to them. And in the admonitions made by the Court to the jury, the Court on numerous occasions explained to the jury that they could not comply with their oaths as jurors unless they adhered strictly to the admonitions of the Court.

At the request of defense counsel, the Court broadened its admonition to include not only publicity of the trial, but also publicity concerning any of the defendants and publicity relating to the subject matter of this case.

Also to be noted is that on January 8th and on February 16, 1959, for example, the Court interrogated the jury at the request of defense counsel in order to determine whether particular news items, which counsel apparently regarded as the most offensive, had come to the attention of the jury. In so doing, and at the further request of defense counsel, the Court of course made no reference to any particular article nor did it in anywise identify the articles. But in each instance no member of the jury indicated that he or she read or saw or heard of the publicity which occasioned the interrogation.

Furthermore, the Court's interrogation of the jurors deliberately was not directed to particular allegedly offensive material because of the possible effect of curiosity on the part of the jury, but rather the Court did put the query in substance: Since you were impaneled as a juror here, have you read anything or has anything come to your attention, or have you seen anything, or have you heard anything on the radio or television or otherwise dealing with this case, with any of the defendants in this case, with any of the names that have been mentioned in this case, or with the general subject matter of this case?*

* Note, not by the Court, but on behalf of petitioner: In this respect the Trial Judge's recollection as to the nature of the question he asked appears to have been seriously incorrect. On both occasions after the jury was empanelled

In each instance the response was in the negative.

Furthermore, in the Court's charge to the jury, the jury was again fully instructed as to their responsibility to consider only the evidence and to dismiss from their minds any extraneous matters. The Court tried to and it is certain that it did succeed in impressing upon the jury the importance of their task as jurors and their responsibility in the administration of criminal justice, and frequently likened their role to the role of the judge. They were specifically instructed also with regard to publicity, as follows, and I will read part of my charge to the jury:

"During the course of the trial I have repeatedly admonished you not to read newspaper or magazine comments or listen to radio or television statements concerning this case or any of the defendants now on trial. I have also asked you to refrain from discussing it amongst yourselves or with others. I am sure that you assiduously followed my instructions, but in an excess of caution I tell you again that you may not and indeed must not consider, in the determination of the guilt or innocence of these defendants, anything you may have read, or heard on such other than the exhibits and testimony received in

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when the Judge had put such a question, his question was more limited in scope, and was far more limited in time since it related only to what had happened "since we last recessed". Thus, on February 16, 1959, the Judge put this question (Tr. 2795):

"THE COURT: Ladies and gentlemen of the jury, have any one of you read or have had called to your attention and discussed with you any article or news item that appeared in any publication since we last recessed which the name of any person on trial in this case appeared? (A juror shake head in negative.)"

and on February 17, 1959, the Judge put this question (Tr. 2861, App. 760a):

"THE COURT: Ladies and gentlemen of the jury, before we start with the regular proceedings may I put this question to you, and I put this question to each one of you: Has any one of you read, or has any one of you had called to your attention, or has anyone discussed with you, any article or news item that appeared in any newspaper or in any other publication since we last recessed, which was last night, in which the name of any person now on trial in this case appeared?
(Jurors shake head in negative.)"

this courtroom. When I say 'anything' I mean it in the fullest sense of the word * * *. For this reason you must be certain that you are not in any manner affected by the nature of the charge against these defendants. You are to consider the charge in this case as you would consider any other charge in a criminal case; and the Government here must be considered in no different light than any other litigant who pleads for justice."

Improper conduct on the part of government officers and agencies in causing publicity is a relevant circumstance for the Court, in its role as supervisor of the administration of criminal justice in our Federal Courts, to consider.

In the case at bar, however, there is no showing that the publications complained of or any of them were caused or inspired by improper conduct of the government, its officers, agencies or instrumentalities. Almost all of these articles contain no internal evidence of having emanated from any governmental source. Moreover, the United States Attorney has represented that neither he nor anyone connected with his office, nor the Department of Justice, nor any federal agency, instigated or caused any of the publicity relating to any of these defendants.

Under all the circumstances, the Court is satisfied that every safeguard indicated for the proper protection of the defendants' rights was availed of, and that the publications complained of did not come to the jury's attention, much less affect their deliberations in anywise.

Oral Opinion of District Court Rendered April 17, 1959, After Verdict (Tr. 7453-7464)

The Court: Thank you. All right.

At the outset the Court will announce its rulings on the various motions for judgment of acquittal or arrest of judgment that were argued the other day.

The defendants' motions for judgment of acquittal or, in the alternative, for a new trial, are bottomed in part upon their oft-repeated cry, "mass trial," a phrase often conjured up by counsel during the course of the proceedings, but rarely analyzed with precision. What they intend to convey by that "catch-word", it may be supposed, is that the rights of a particular defendant may be trammeled if he is tried together with other defendants. So superficial an approach, however, loses sight of the various considerations which inhere in the problem.

If separate trials as to each defendant were to be inexorably granted without regard to whether in the particular instance the legitimate interests of the defendant required the same, the resultant duplication of judicial effort and expense would seriously interfere with due and efficient judicial administration. In the case at bar, a multiple defendant narcotics conspiracy, the single charge against each of the defendants tried here results from substantially the same series of acts and transactions and, with respect to each defendant, the evidence is substantially the same. In that connection see United States v. Lebron, 222 F. 2d 531, decision of this Circuit in 1955; and another decision of this Circuit in 1942 in United States v. Cohen, 124 F. 2d 164.

If separate trials were the universal rule, the Government would, in effect, be required to disclose its witnesses and evidence in advance of all but the first of a series of logically related trials. Neither proper concern for the protection of the rights of the defendants nor the due administration of criminal justice would suggest such a rule. The Federal Rules of Criminal Procedure impose no such obligation. Moreover, evidence and witnesses might not be available for succeeding trials. Nor can we blind our eyes to the instances where Government witnesses have met with untimely demise before their testimony could be given at a subsequent trial.

The paramount consideration is, of course, that the rights of each defendant be fully protected and that his guilt, if any, be determined on an individual basis. As the Court of Appeals for this circuit recently stated in the De Fillo case, decided in 1958:

> "Unless a rule is to be formulated that there must be a separate trial of every individual defendant, constitutional safeguards must continue to rest upon the assumption that the Court will properly instruct the jury as to such evidence and that the jury will follow such instructions. The argument that the jury may have been misled is based upon an assumption that they did not follow the Court's instructions. The clarity of the charge affords no basis for any such premise."

It is clear, therefore, that a trial of multiple defendants does not, by reason of that circumstance alone, offend our notions of due process or fair play. Quite obviously, there is neither magic in the appellation "mass trial" nor does that term contribute to an intelligent understanding of the problems involved in a trial of multiple defendants. We must inquire rather in each instance whether the rights of each and every defendant were properly and adequately safeguarded.

First, it should be noted that 37 defendants were named in the indictment. During the course of the pretrial proceedings, the Court indicated that unless the Government of its own motion moved to sever as against a substantial number of defendants, it would entertain motions for severance made on behalf of a number of defendants. Thereafter the Government's motions to sever the trial as to 20 defendants were granted. The Court was of the view that the joint trial of the remaining 17 defendants could be and was had without prejudice to the rights of any one of them.

Throughout the jury selection process, which consumed one week, the Court carefully interrogated the veniremen with the view to and the declared purpose of securing an absolutely fair and impartial jury. All counsel were invited to submit proposed questions for the voir dire both prior to and during the course of that examination. Many counsel availed themselves of this opportunity. Further, the Court, in the exercise of its discretion, granted defense counsel 38 peremptory challenges in addition to the 10 such challenges authorized by Rule 24(b) of the Federal Rules of Criminal Procedure, while the Government was limited to the six peremptory challenges afforded by that rule.

The granting of that number of additional peremptory challenges apparently is unprecedented. It was done, however, to assuage counsel's concern that a lesser number would be inadequate to enable them to obtain a jury satisfactory to them.

It is significant that defense counsel did not utilize all of the peremptory challenges which were alloted to them. Throughout the voir dire examination and prior to the time that the taking of the testimony commenced, the Court instructed the jury that under our system of law guilt was personal and that the case of each defendant must be given separate and individual consideration. Substantially the same instructions were given repeatedly to the jury throughout the trial. For example, on January 5, 1959, the very first day of the voir dire, the Court instructed the jury as follows:

> "There are 17 defendants together on trial. However, the guilt or innocence of each defendant will be determined by you on an individual basis since there can be no guilt by mere association."

Again on January 9, 1959, after the alternate jurors were sworn, the Court made some introductory statements to the jury in which it stated inter alia as follows:

"The burden of proof is always upon the Government and that burden is carried from the beginning to the end and that burden is to establish the guilt of each accused on a personal basis to your satisfaction beyond a reasonable doubt."

Each of the defense counsel was afforded the fullest opportunity to make an opening statement. Ten counsel, representing 12 defendants, availed themselves of that opportunity. During the taking of testimony, each defense counsel was given the widest latitude in conducting his cross-examination, notwithstanding that on occasion it resulted in repetition and overlapping. On but a few occasions, singularly few for a trial of this nature, was evidence admitted only as against a particular defendant or defendants. On each of said occasions, and again in its charge, the Court was at pains to carefully instruct the jury as to the use that they might make of such evidence.

Each defense counsel was asked to indicate the amount of time he would require for summation and in all cases but one, the time requested was granted. In the one instance where the request was denied, counsel for one defendant asked for three hours, but the Court limited him to two hours, since that was the longest time requested by other counsel, some of whom represented more than one defendant. The fact is that the summation of counsel whose three-hour request was denied, ultimately consumed approximately one half of the time allotted to him.

The jury was charged in part as follows:

"It is your duty to give separate, personal consideration to the case of each individual defendant. You will remember that on several occasions during the course of the trial I had occasion to call your attention to the fact that guilt is personal and that each defendant is entitled to have his case determined from his

own acts and statements and the other evidence in the case which may be applicable to him.

"As I have instructed you, the guilt or innocence of each of the 16 defendants must be determined separately."

With the applicable law before it, and after having listened attentively to the evidence in this case, and after having had the benefit of some seven days of detailed summation by experienced counsel, as well as the Court's recollection of the evidence pertaining to each defendant, there can be little doubt that the jury was in the position to determine, on an individual basis, the guilt or innocence of each defendant. The jurors having been clearly and repeatedly instructed that guilt, if any, was to be determined on an individual basis, it must be assumed that they followed these instructions.

As our Court of Appeals recently said:

"It is fundamental to the jury system that they will be presumed to follow the court's charge and to limit their consideration to the evidence which may be properly applied against each defendant where more than one defendant is on trial."

But in this case we need not rest on this presumption alone. The extent of the jury's deliberations, the questions which it propounded to the Court from time to time during the course of its deliberations, and its verdict, clearly indicate that it paid careful heed to the Court's instructions and that it was mindful of the oath, the solemn oath that they took when they embarked upon the responsible task of serving as jurors in this case.

More than 24 hours elapsed between the time that the jury commenced its deliberations and the time that a verdict was returned. During the course of its deliberations the jury requested and was given a copy of the statement

of the defendant Aviles, the Court's amendment to the charge regarding telephone calls in relation to the defendant Fiano, and now, quoting from the requests as received from the jury, "The examination by Mr. Menahem Stim of the witness Nelson Cantellops," and again quoting, "that portion of witness Cantellops' testimony on direct examination to the identification of defendant Louis Fiano in the courtroom."

Further, the jury returned a verdict of Not Guilty as to a defendant whose conduct in their presence fell far short of being exemplary. Based on all of the foregoing, the Court is satisfied beyond cavil that the jury carefully followed its instructions.

In sum, unless we are to formulate a rule that there must be a separate trial of every defendant or that no more than some arbitrary number of defendants may be tried together, our inquiry must be whether the rights of each and every one of the defendants were carefully safeguarded. Under all of the circumstances, the Court is satisfied that the rights of each of the defendants in this case were protected consistently with the most punctilious regard for due process of law.

With regard to counsel's contention concerning overt act 15, which the Court withdrew from the jury, it appears to the Court that the gravamen of the argument made by counsel is that by withdrawing said overt act the Court necessarily thereby made a finding that there was insufficient evidence upon which the jury might determine that the act therein set forth actually took place.

There were, you will recall, some 28 overt acts charged in the indictment. This Court made it plain to the jury that in order to convict under the essential elements of the crime charged required but the commission of one overt act in pursuance of the purposes and objects of the conspiracy, so that the others were surplusage, as long as

one act was proved. A reading of the entire charge of the Court clearly negatives the possibility of such a finding that the Court indicated that its withdrawal of overt act 15 from the jury was based upon its belief or its conclusion as to the sufficiency of the evidence related thereto. I specifically direct attention to those portions of the instructions dealing with the Court's recollection of the independent evidence relating to the defendant Santora as well as to the other defendants.

Furthermore, since the Court obviously did not make a finding that there was insufficient evidence, the withdrawal of the overt act could not have prejudiced the defendant Santora. On the contrary, the withdrawal could only redound to the benefit of the defendants, and each of them, by thus reducing the number of overt acts, thereby delimiting the scope of an essential element of the crime charged.

Furthermore, that overt act was never read to the jury and was physically deleted from the copy of the indictment delivered to the jury at its request during the course of their deliberations. So that that overt act, or the inclusion of that overt act in the indictment, and the Court withdrawing it from the attention of the jury, could not be said in any wise to have affected the verdict.

The other points and contentions urged by the defendants were duly treated with when raised, either during the course of the trial or upon the argument of these motions sub judice or lack sufficient merit to warrant extended comment. However, not one contention urged by counsel here has been overlooked.

Accordingly, the respective motions made on behalf of each of the defendants are denied.

APPENDIX B

Constitutional, Statutory and Rules Provisions Involved

1. Due Process Clause of the Fifth Amendment to the Constitution:

> No person shall be . . . deprived of life, liberty, or property, without due process of law; . . .

2. The federal narcotics laws provisions found in 21 U.S.C. §§ 173, 174:

> § 173. Importation of narcotic drugs prohibited; exceptions; crude opium for manufacture of heroin; forfeitures. It is unlawful to import or bring any narcotic drug into the United States or any territory under its control or jurisdiction; . . .
>
> § 174. Same; penalty; evidence
>
> Whoever fraudulently or knowingly imports or brings any narcotic drug into the United States or any territory under its control or jurisdiction, contrary to law, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of any such narcotic drug after being imported or brought in, knowing the same to have been imported or brought into the United States contrary to law, or conspires to commit any of such acts in violation of the laws of the United States, shall be imprisoned not less than five or more than twenty years and, in addition, may be fined not more than $20,000. For a second or subsequent offense (as determined under section 7237(c) of the Internal Revenue Code of 1954), the offender shall be imprisoned not less than ten or more than forty years and, in addition, may be fined not more than $20,000.
>
> Whenever on trial for a violation of this section the defendant is shown to have or to have had possession of the narcotic drug, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant explains the possession to the satisfaction of the jury.

3. Rule 14 of the Federal Rules of Criminal Procedure:

Rule 14. Relief from Prejudicial Joinder.

If it appears that a defendant or the government is prejudiced by a joinder of offenses or of defendants in an indictment or information or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires.

4. Rule 21 (a) of the Federal Rules of Criminal Procedure:

Rule 21. Transfer from the District or Division for Trial

(a) For Prejudice in the District or Division. The court upon motion of the defendant shall transfer the proceeding as to him to another district or division if the court is satisfied that there exists in the district or division where the prosecution is pending so great a prejudice against the defendant that he cannot obtain a fair and impartial trial in that district or division.

5. Rule 26 of the Federal Rules of Criminal Procedure:

Rule 26. Evidence.

In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by an act of Congress or by these rules. The admissibility of evidence and the competency and privileges of witnesses shall be governed, except when an act of Congress or these rules otherwise provide, by the principles of the common law as they may be interpreted by the courts of the United States in the light of reason and experience.

6. Rule 29 of the Federal Rules of Criminal Procedure:

Rule 29. Motion for Acquittal

(a) Motion for Judgment of Acquittal. Motions for directed verdict are abolished and motions for judgment of acquittal shall be used in their place. The court on motion of a defendant or of its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the indictment or information after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses. If a defendant's motion for judgment of acquittal at the close of the evidence offered by the government is not granted, the defendant may offer evidence without having reserved the right.

(b) Reservation of Decision on Motion. If a motion for judgment of acquittal is made at the close of all the evidence, the court may reserve decision on the motion, submit the case to the jury and decide the motion either before the jury returns a verdict or after it returns a verdict of guilty or is discharged without having returned a verdict. If the motion is denied and the case is submitted to the jury, the motion may be renewed within 5 days after the jury is discharged and may include in the alternative a motion for a new trial. If a verdict of guilty is returned the court may on such motion set aside the verdict and order a new trial or enter judgment of acquittal. If no verdict is returned the court may order a new trial or enter judgment of acquittal.

7. The "Jencks Act", 18 U.S.C. § 3500:

§3500. Demands for production of statements and reports of witnesses

(a) In any criminal prosecution brought by the United States, no statement or report in the possession of the United States which was made by a Government

witness or prospective Government witness (other than the defendant) to an agent of the Government shall be the subject of subpoena, discovery, or inspection until said witness has testified on direct examination in the trial of the case.

(b) After a witness called by the United States has testified on direct examination, the court shall, on motion of the defendant, order the United States to produce any statement (as hereinafter defined) of the witness in the possession of the United States which relates to the subject matter as to which the witness has testified. If the entire contents of any such statement relate to the subject matter of the testimony of the witness, the court shall order it to be delivered directly to the defendant for his examination and use.

(c) If the United States claims that any statement ordered to be produced under this section contains matter which does not relate to the subject matter of the testimony of the witness, the court shall order the United States to deliver such statement for the inspection of the court in camera. Upon such delivery the court shall excise the portions of such statement which do not relate to the subject matter of the testimony of the witness. With such material excised, the court shall then direct delivery of such statement to the defendant for his use. If, pursuant to such procedure, any portion of such statement is withheld from the defendant and the defendant objects to such withholding, and the trial is continued to an adjudication of the guilt of the defendant, the entire text of such statement shall be preserved by the United States and, in the event the defendant appeals, shall be made available to the appellate court for the purpose of determining the correctness of the ruling of the trial judge. Whenever any statement is delivered to a defendant pursuant to this section, the court

in its discretion, upon application of said defendant, may recess proceedings in the trial for such time as it may determine to be reasonably required for the examination of such statement by said defendant and his preparation for its use in the trial.

(d) If the United States elects not to comply with an order of the court under paragraph (b) or (c) hereof to deliver to the defendant any such statement, or such portion thereof as the court may direct, the court shall strike from the record the testimony of the witness, and the trial shall proceed unless the court in its discretion shall determine that the interests of justice require that a mistrial be declared.

(e) The term "statement", as used in subsections (b), (c), and (d) of this section in relation to any witness called by the United States, means—

(1) a written statement made by said witness and signed or otherwise adopted or approved by him; or

(2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by said witness to an agent of the Government and recorded contemporaneously with the making of such oral statement.

8. The provisions of 28 U.S.C. § 2106:

§ 2106. Determination

The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

APPENDIX C

Portions of Prejudicial Publicity Between Arraignment and Trial and During the Trial

[New York Journal-American, July 8, 1958]
(Genovese Exhibit B)

36 More Named In Mafia Roundup

Vito Genovese, chief of the Mafia, and his upcoming understudy, Vincent "The Chin" Gigante, were held in $50,000 and $35,000 bail, respectively, today as leaders of a huge narcotics conspiracy.

Charged with conspiracy to import and distribute heroin and other narcotics, both were named with 36 others in indictments charging they schemed and participated in the coast-to-coast dope peddling.

When Genovese, oft-branded as the most sinister mobster of this era, and undisputed leader of the underworld was brought before Federal Judge Herlands, U. S. Atty. Paul W. Williams said:

"Genovese is the man responsible for seeing that any annoying competition to the vast narcotics empire is elimirated."

The Federal prosecutor characterized Gigante as:

"The rising star and closest intimate of Genovese."

Gigante was recently acquitted of trying to kill Frank Costello.

Others, among those indicted today are Charles DiPalmero, Joseph DePalermo, Natalie Epola, Carmine Galente, Benjamine Levine, John Ormento, Salvatore Santora, and Joseph Vento.

Williams said Genovese, "kingpin of the mob," and his co-defendants imported drugs, mostly heroin from Europe, through Puerto Rico, Cuba and Mexico, and funneled them through underground channels throughout the nation.

DRUG CENTERS

He pin-pointed New York City, Chicago, Las Vegas, Philadelphia and Cleveland as centers for distribution of large quantities of drugs.

Genovese, 61, besides being the overlord of the nation's dreaded Mafia organization, is also a gambling kingpin, and alleged boss of vice and waterfront rackets in the city.

Gigante, 30, a blubbery former boxer, is the underworld figure accused and later ac-

Mafia Boss Jailed In U.S. Crackdown

Continued from First Page

cused the gunman who bungled the attempted assassination of Costello.

For the first time, Genovese and Gigante, who represent the "elite" and bottom-rung mobsters, respectively, were pinned to the widespread narcotics traffic and racketeering.

Significantly both were arrested by Treasury Dept. narcotics detectives. Both were booked on charges of conspiracy to violate narcotics laws. Both were refused bail.

U. S. Atty. Williams, who announced the arrests, said the result of the crackdown "might well be to drive the Mafia out of the narcotics business."

Williams said the other arrests would include "at least two, and possibly more" of the underworld delegates to the Mafia's "convention" last November in upstate Apalachin.

"Our probe of 'the suspects' narcotics activities . . . disclosed that Genovese was the hub around which the entire drug network operated, and Gigante was one of his proteges and a rising star," Williams added.

The "network" to which Williams referred came to light last month with the arrest of 15 men and three women said to be responsible for smuggling hundreds of pounds of drugs into this country.

Some of those arrested were said to have cooperated in the investigation, which led to today's major crackdown.

Federal agents seized Genovese at his $20,000 Atlantic Highlands, N. J., home. It was from the house at 68 W. Highland ave. that he allegedly directed not only his drug and racket activities police say, but also a $20,000-a-week "lottery".

ARRESTED IN VILLAGE

Gigante, a relatively smalltime hood until the Costello shooting, was arrested at the "Lexington Social Club," at Spring and Sullivan sts., in the heart of Greenwich Village.

Following their arrests both were taken to the Federal Narcotics Bureau at 90 Church st. where they were questioned separately and extensively before being taken to the U. S. Attorney's office for more questioning.

At midnight, Genovese's lawyer, Wilfred L. Davis arrived in William's office where he was allowed to talk briefly with his client, Genovese was whisked off to the Federal House of Detention to spend the rest of the night. Davis said he had been looking for Genovese all night.

If Genovese was unhappy about his arrest he didn't show it. He was in a jocular mood when he emerged from William's office in the U. S. Court House building on Foley Square.

"You'll have to ask my lawyer," he laughed at a reporter who asked him: "Are you guilty of this one, Vito?".

Lawyer Davis, whose office is at 149 Broadway, wasn't in a laughing mood.

"We'll have to see what develops in court today," he answered soberly to a similar question from the same reporter.

Genovese only last Wednesday had invoked the Fifth Amendment 150 times in one appearance in Washington before a Senate committee probing the "congress of crime."

Two questions he ducked concerned his membership in the Mafia and whether he'd ever killed a man.

New York police records on Genovese which date from 1917, show numerous arrests for homicide and assault, which were repeatedly dismissed.

He is currently "suspect No. 1" of New York Police as the man who had a hand in ordering the assassination of Albert Anastasia, one time lord high executioner for Murder Inc.

Police investigation of that murder in a barber chair at the Hotel Park Sheraton last October 25, showed that it came at a time when Anastasia was attempting to muscle into licensed gambling activities controlled by Genovese in Havana, Cuba.

Gigante surrendered to police last Fall after a four-month search as a suspect in the Costello shooting. Detectives had sought him as the gunman in the assassination attempt on Costello May 2, 1957, in the lobby of the gambler's Central Park W. apartment building. Costello suffered a head wound.

Gigante didn't attend the Apalachin "congress." He was in jail at the time of that roundup, awaiting trial on the Costello charge. The Mafia clan congregated at the home of Joseph Barbara in Apalachin.

Gigante was acquitted of the Costello attack. His last known address was 134 Bleecker st., only a few blocks from where he was picked up by federal narcotics detectives.

[New York Times, July 9, 1958]
(Genovese Exhibit C*)

Genovese Freed In Bail of $50,000

He and Gigante Arraigned in Narcotics Plot

By Harrison E. Salisbury

Vito Genovese and Vincent L. Gigante were arraigned in Federal Court here yesterday on an indictment charging them with participation in an international narcotics conspiracy.

The indictment named thirty-seven persons as members of a syndicate importing large quantities of heroin and other narcotics from Europe, Cuba, Puerto Rico and Mexico. The drugs were said to have been distributed in such areas as New York, Chicago, Philadelphia, Cleveland and Las Vegas.

United States Attorney Paul W. Williams, who presented the case personally to Federal Judge William B. Herlands, described Genovese as the No. 1 control man of the syndicate.

Genovese, a reputed Mafia leader, Mr. Williams said, is known to his associates as The Right Man. He called this title indicative of his distinction and a badge of his importance in the organization."

Genovese was a participant in the underworld convention held at Apalachin, N. Y., last Nov. 14. His record of arrests for charges ranging from homicide down dates to 1917. He has been named in racket and criminal inquiries repeatedly over the last twenty years. He came to the United States in 1913 from Italy, became a citizen in 1936 and was deprived of citizenship in 1952.

He was held on $50,000 bail after Mr. Williams had described him as the man who decided in which area narcotics would be sold and who was to have concessions for their sale. Gigante was held in $35,000 bail. Both Genovese and Gigante posted bond and were released by 4 P. M.

Genovese, his countenance placid behind horn-rimmed glasses, listened quietly as his attorney, Wilfred L. Davis, challenged the portrait painted by Mr. Williams. Genovese delicately touched his glasses from

* Accompanying photographs of Genovese and Gigante are omitted here.

time to time and flicked an invisible bit of lint from his conservatively expensive gray suit. He wore a white-on-white shirt, a dove-gray tie and dark shoes. A white handkerchief peeked from his breast pocket.

Mr. Davis called Mr. Williams' picture "grossly inaccurate." Genovese, he said, is a small business man in a competitive field, a man who paid his income taxes and lived a family life in a small rented house.

Genovese, his lawyer said, is in the "strapping" business as the operator of the ERB Strapping Company. Judge Herlands said he did not understand this business. Mr. Davis explained that it involved the repackaging, recoopering and relabeling of packages.

"If Judge Herlands had a package, for instance," he started to say.

"That's a Freudian wish," Judge Herlands cut in. "I guess I understand the business now."

Mr. Davis, calling Genovese a family man with children—his daughter lives next door to the home at 68 West Highlands Avenue, Atlantic Highlands, N. J., where he was arrested Monday night—sought unsuccessfully to get a reduction in bail.

Gigante, a bulky figure in rumpled plaid tan sports shirt, stood with hands behind his back, apparently oblivious to the walnut-paneled courtroom during the discussion of Genovese.

Gigante tilted his chin in the fashion that has given him his nickname when Mr. Williams called him "a protégé of Genovese, a rising star in the underworld and the No. 1 boy of this man, Genovese."

"Their participation in the conspiracy seems to be invariably together and simultaneous," Mr. Williams said.

Gigante's mouth drooped half-open as Mr. Williams recalled that he had been recently acquitted in the shooting of Frank Costello, the gambler. Gigante was described as 30 years old, married, the father of four children and a resident in 134 Bleecker Street.

Of the thirty-seven persons named in the indictment twenty-three have been arrested, eight are now serving prison terms and six are at large.

Those who have been arrested, according to Assistant United States Attorney William D. Walsh, include:

Natale Evola, 972 Bay Ridge Avenue, Brooklyn, one of those

who attended the Apalachin meeting.

Benjamin Levine, 63, Bay Boulevard and Richards Street, Atlantic Beach, L. I., named by Mr. Williams as a financier of narcotics traffic.

Rocco Mazzie, 48, of 2332 Seymour Avenue, the Bronx.

Joseph Di Palermo, 51, of 246 Elizabeth Street.

Joseph Benancourt, 29, Sheridan Square Hotel, Broadway and Seventieth Street.

Nelson Hermida, 32, of 188 Columbus Avenue.

Alexander Lenbo, 52, of 6 St. Marks Place.

Jean Capee, 29, of 22 Spring Street.

Daniel Lessa, 40, of 2588 Sampson Avenue, the Bronx.

Nicholas Lessa, 36, of 321 Pleasant Avenue.

Alfredo Aviles, 29, of 99 Avenue C.

Gloria Leon, 26, of 188 Columbus Avenue.

Luis Cantress, 27, of 1517 Charlotte Street, the Bronx.

Salvatore Marino, 22, of 39 East First Street.

Joseph Vento, 45, of 168-01 Twelfth Avenue, Whitestone, Queens.

Andimo Pappadio, 44, Lido Beach, L. I.

Benjamin Rodriquez, 23, of 1914 Leggett Avenue, the Bronx.

Salvatore Santora, 43, of 136 Long View Avenue, Leonia, N. J.

Louis Fiano and William Reviera, addresses unknown.

The twenty-third man was arraigned yesterday. He was identified as Carmine A. Polizzano, 38, of 45-34 Forty-seventh Street, Woodside, Queens. He was held on $10,000 bail for pleading July 16.

Those still being sought are John (Big John) Ormento, 45, Lido Beach, L. I.; Charles Di Palermo, brother of Joseph, address unknown; Joaquin Corde, Cordova, address unknown; Carmine Galante, 48, 227 Marcy Avenue, the Bronx, a participant in the Apalachin meeting; John Doe, also known as James Laurensano, address unknown, and Mary Doe, also known as Rose, address unknown.

The defendants in prison are Charles Barcellona, Rosario Colletti, Peter Contes, Santiago De Fillo, John Gonzalez, John Tusso, Ralph Polizzano and Anthony Colonna. The indictment also named fourteen co-conspirators.

[New York World-Telegram, July 8, 1958]
(Genovese Exhibit D*)

Genovese Faces Court Over Dope

RACKETS KING, AID TO BE ARRAIGNED

Mafia monarch Vito Genovese, "king of the rackets," and his court clown, Vincent (The Chin) Gigante, were taken to Federal Court today for arraignment on charges of conspiracy to violate narcotics laws.

Both were arrested last night by federal narcotics agents armed with bench warrants based on a sealed indictment returned by a federal grand jury. United States Attorney Paul W. Williams said names of other defendants would be disclosed before Federal Judge William B. Herlands.

Worth $30 Million

Genovese, 61, described by Senate rackets committee witnesses as an underworld ruler worth at least $30 million, was seized in his modest white cottage at 68 W. Highlands Ave., Atlantic Highlands, N. J.

Gigante, a small-time thug who was acquitted last May of shooting gambling czar Frank Costello, was picked up two hours earlier at the Lexington Social Club, Spring and Sullivan Sts., on the Lower East Side.

The two arrests signaled the

(Continued on Page Two)

* Accompanying photographs of Genovese and Gigante are omitted here.

Genovese, Gigante Face Court on Dope

(Continued from Page One)

start of a drive which, Mr. Williams said, may "drive the Mafia out of the narcotics business".

Mr. Williams said Genovese and Gigante were involved in an international narcotics ring which was smashed June 4 with the arrests of 15 men and three women. At the time, Mr. Williams said the ring had smuggled hundreds of pounds of herin into the United States annually.

"The arrest of Genovese is one of the most important arrests ever made in this field," Mr. Williams said last night. "Our investigation disclosed Genovese was the hub around which the entire conspiracy revolved, and Gigante was one of his proteges and a rising star."

Genovese was the most important mobster at the Mafia convention state police broke up at Apalachin, N.Y., last Nov. 14. Gigante was in jail at the time, awaiting trial for the attempt to murder Costello. Appearing before the Senate rackets committee last week, Genovese invoked the Fifth Amendment more than 150 times.

[New York Daily News, July 9, 1958]
(Genovese Exhibit E*)

Indict Vito and 36 as Dope Plotters

By Dominick Peluso
And Sidney Kline

Bespectacled, somber Vito Genovese, 61, reputed Mr. Big of the nation's dope and gambling rackets, and his hulking No. 1 Boy, Vincent (Chin) Gigante, 30, were hailed before Federal Judge William B. Herlands yesterday on narcotics conspiracy charges. They pleaded not guilty and soon walked away free men, Genovese under $50,000 bail pending trial, Gigante under $35,000.

Thirty-five others were named in the same one-count indictment.

During the arraignment, U. S. Attorney Paul W. Williams depicted Genovese as the "control man" who made final decisions on the illicit importation of narcotics from Europe, Cuba, Puerto Rico and Mexico and their distribution throughout the U. S.

Williams described Gigante, recently acquitted on charges of attempting to assassinate gambler Frank Costello, as "a rising star in the underworld."

35 Other Defendants

Arrested Monday night, Genovese and Gigante were brought into court at 10:35 A.M., five minutes after Herlands opened a sealed indictment naming them and the 35 others as defendants in a conspiracy to import and distribute narcotics illegally from February, 1955, through June, 1958.

Twenty-eight overt acts were listed. Fourteen other persons were named as co-conspirators, but not as defendants.

Of the 37 defendants, Williams disclosed, 23 were under arrest, eight were serving time in federal or state prisons for narcotics violations and six were fugitives for whom warrants had been issued.

Genovese Called Top Man

The kingpin of the conspiracy, the U. S. attorney said, was Genovese.

Requesting $50,000 bail, Williams told the judge: "My office is prepared to prove that Geno-

* Accompanying photographs of Genovese and Gigante are omitted here.

vese made the decision in which areas narcotics should be sold and who was to have the concession. He was the man responsible for seeing to it that any annoying competition was eliminated.

"He is the No. 1 man in this conspiracy. He was referred to by his underlings as the 'right man'."

Status That of Alien

The U. S. attorney noted that Genovese, born in Italy, became a U. S. citizen in 1913, was stripped of that citizenship in 1952 by Federal Judge Philip Forman in New Jersey for fraud, has appealed loss of citizenship and currently is "in the position of an alien permanently residing in the U. S."

Williams went on to point out that Genovese was a man of many aliases, frequently called upon to testify by investigating groups, but one who volunteered no information.

Worth Put at $30 Million

The U. S. attorney reported that while Genovese professed to have a modest income, paying taxes in 1952 on $6,800 and on $14,000 in 1956, District Attorney Frank Hogan's detectives had es-

(*Continued on page 6, col. 1*)

'King' Vito Out in 50G Bail on Dope Plot Rap

(*Continued from page 3*)

timated Genovese's wealth at $30 million.

Not too convincingly, Genovese's attorney, Wilfred Davis, depicted his client as a small businessman who operated a small repacking firm in Manhattan and rented his home in Atlantic Highlands, N. J. He asked that bond be set at $10,000.

Overlooked Vital Points

Davis did not point out that Genovese beat a murder rap in 1946 after two witnesses were murdered, and that Genovese was a key delegate to last year's mobster convention in upstate Apalachin.

Nor did Davis note that Genovese's home is furnished with works of art valued at $200,000.

Herlands was unswayed by Davis' oratory and set bond at $50,000.

Cites Close Cooperation

Williams asked $35,000 bail for Gigante, whom he described as Genovese's protege. "The participation of these two in the conspiracy seems to be invariably together and simultaneously," said Williams.

Maurice Edelbaum, attorney for Gigante, did not even protest the $35,000 requested.

At 12:20 P. M., bail formalities completed by professional bonding companies, conservatively dressed Genovese and sloppily clad Gigante left the Federal Court House together. In one of his rare public pronouncements, Genovese told newsmen on the steps: "Its ridiculous. It's not even funny."

Third Arraignment

There was a third arraignment on the indictment, conducted at noon before Herlands.

The defendant was Carmine A. Polizzano, 38, of 45-34 47th St., Woodside, Queens, an $87-a week trucker's helper. Assistant U. S. Attorney William D. Walsh represented the government.

About a month ago, Walsh said, a cousin of the defendant—the

cousin also named Carmine Polizzano — "unfortunately" — was arrested on a warrant issued for the man now before the bench.

Got Right Man Later

The government, said Walsh, discovered its error, freed the innocent man and had picked up the right man, who was "consistently and persistently the contact between defendants named in the indictment."

Herlands freed Polizzano in $10,000 bail pending pleading next Wednesday.

On that day, a number of other defendants — arrested on marshal's warrants earlier, before the indictment was returned — will be brought back to plead to the indictment.

Trial of all the accused probably will take place in September or October, an aid to Williams said.

The indictment charges that the ring, after smuggling dope into the U. S., diluted its strength and distributed it in New York, Chicago, Las Vegas, Philadelphia, Cleveland and other cities.

Conviction could bring penalties of from 5-to-20-year terms and $20,000 fine for first offenders, 10-to-40 year terms and $20,000 fine for third offenders.

Warrants for Fugitives

The fugitives for whom warrants have been issued were John (Big John) Ormento, 45, of Lido Beach, L. I.; Charles Di Palermo, a brother of Joseph (Joey) Palermo, 51, a leader in the conspiracy, authorities said, who already is behind bars; Joaquin Corbo-Cordova; Carmine Galente, 48, of Brooklyn; a John Doe "also known as Rose."

Ormento and Natale Evola, 51, of 972 Bay Ridge Ave., Brooklyn, the latter arraigned on a narcotics warrant on June 4 and scheduled for arraignment on the indictment next Wednesday, were among the Apalachin delegates.

Galente's connections came in for scrutiny by the legislative watchdog committee earlier this year, when it developed that four assemblymen and two other politicians "made inquiries" after Galente's arrest on traffic charges in 1956.

Galente had been picked up in Binghamton for speeding and driving without a license. Somehow or other, he arranged to have the politicians inquire into the case.

They did inquire, but did not intervene, the watchdog committee established. Galente drew a 30-day jail term and $150 fine on a guilty plea.

[New York Herald Tribune, July 9, 1958]
(Genovese Exhibit F)

Genovese Posts Bail of $50,000

CALLED 'NO. 1' IN HUGE DOPE RING

By Milton Lewis

Vito Genovese, a Don (Prince) of the Mafia, dipped into his reportedly $30,000,000-deep till yesterday and posted a $50,000 bond on charges of being the commanding general of a huge international narcotics combine.

That amount of bail was put up within thirty minutes after a Federal judge set the figure for the Apalachin alumnus. United States Attorney Paul W. Williams described the sixty-year-old thug as the conspiracy's string-puller, the one who allocated heroin "concessions" throughout the United States and as the "No. 1 control man" who "eliminated annoying competition."

Genovese, a short, slight, bespectacled, graying racketeer seemed not to be listening in the jammed United States District Court when Mr. Williams said of him:

"His underlings call him the 'right man.'"

Just as the neatly attired Genovese walked out free after spending the night in a cell, so did two others who were arraigned on an indictment which in all named thirty-seven defendants and fourteen others, listed as co-conspirators as distinct from defendants. Many of the alleged co-conspirators, it was understood are co-operating

Genovese

(*Continued from page one*)

with Federal narcotics agents and Assistant United States Attorneys William D. Walsh and William Tendy, who worked up the indictment.

Arraigned jointly with Genovese was the hulking Vincent L. (Chin) Gigante. This thirty-year-old hoodlum was acquitted on May 27 in the attempted assassination a year ago of Frank Costello, long at odds with Genovese. Gigante seemed offended and stood with mouth agape as Mr. Williams said of him, a former heavyweight boxer:

"He is a protege of Genovese. He is a rising star in

the underworld. He is the No. 1 boy of this man Genovese.

Gigante, who like Genovese, was picked up Monday night, looked as if he were going to blurt out "Who? Me?" when he was restrained by his counsel, Maurice J. Edelbaum. This is the same lawyer who represented him successfully in the Costello shooting, in which case Gigante was able to post $100,000 bail.

This time, Judge William B. Herlands set bond of $35,000 for Gigante, and he figuratively walked out of court arm and arm with Genovese. Where Genovese is reportedly a "rich" millionaire, Gigante says his income is $75 a week as a truck driver's helper.

Both Genovese and Gigante pleaded innocent through counsel, Genovese being represented by Wilfred L. Davis. The third defendant arraigned was Carmine X. Polizzano, thirty-eight, of 45-34 47th St., Woodside, Queens. He was released in $10,000 bond and will plead next Wednesday, when most of the thirty-four other defendants in custody will also be arraigned on the indictment.

One of them, Natale Evola, fifty, of Brooklyn, will be arraigned today. He was also a delegate to the Apalachin underworld conference last November 14, along with another defendant, Joseph DiPalermo, described by Mr. Williams as one of the "top dogs" in the conspiracy.

At least eighteen of the defendants named in the indictment opened yesterday were originally arrested as alleged members of the combine on Nov. 4. Among these was Benjamin (Boom Boom) Levine, of Atlantic Beach, L. I., "retired" garment manufacturer who has been described by Mr. Williams as the "financier" of the conspiracy.

Of the thirty-seven men and women listed as defendants in the one-count true bill, twenty-three have been arrested on narcotics charges, eight are already in jail on previous charges and six are fugitives. Among the fugitives are Camillo Galante, a suspect in the 1943 Carlo Tresca murder, and John (Big John) Ormento, another Apalachin conferee.

When Genovese was picked up at his modest home in Atlantic Highlands, N. J., Monday night he had $429 on him. Gigante, taken into custody in a social club in Greenwich Village, where he reportedly lives at 183 Bleecker St., had $314 on him. No one said of the money

"It was a loan from me
sudden."

In asking for high bail, Mr.
Williams said this was a mass
operation from February, 1955,
June, 1957, to import heroin
and other dope from Europe
rough Cuba, Mexico and Puerto
Rico.

Before fixing bail for Geno-
ese, Judge Herlands, a former
rackets buster himself, wanted
know what the thug does for
living. Last week Genovese
ok the Fifth Amendment 160
mes before the Senate Rackets
committee in Washington. His
wyer said yesterday he was in
the "relabeling and repackaging
siness."

Outside court Genovese said:

"This whole thing is ridiculous. I'm a legitimate business man."

Mel Gigante said as he was
t down the steps of the court
ouse:

"I'll get dis rap, too."

If convicted, the defendants
ce from five to twenty years.
They are first narcotic of-
enders, plus a $20,000 fine. If
any are second or subsequent
offenders, they can be sentenced
from ten to forty years, plus the
same fine.

Genovese was tried in Brooklyn in 1946 for a 1934 murder. But after that twelve-year lapse a key witness disappeared; in fact, the witness was found murdered and with that the case against Genovese went out the window in Kings County Court. Judge Samuel S. Leibowitz said to Genovese in being forced to dismiss the murder indictment against him in 1946:

> "You have led a charmed life. You have always been one step ahead of Sing Sing and the electric chair. You and your criminal henchmen thwarted justice time and time again by devious means, among which were the terrorizing of witnesses, kidnapping them and, yes, even murdering those who could give evidence against you."

Among other things, Genovese was a ranking partner of Albert Anastasia in Murder, Inc. "A.A." was slain last Oct. 25 in a mid-town hotel barber shop.

[New York Journal-American, Sunday, Aug. 3, 1958]

(Genovese Exhibit G)

VITO GENOVESE

America's Number 1 Racketeer

Who is Vito Genovese? Law enforcement officials agree that he has snatched the mantle of America's King of the Rackets from the shoulders of ailing Frank Costello. Here is the first of a series of articles that takes you behind Vito's mask of respectability to trace his origin and his rise to power in the underworld.

By EDWARD NEWMAN and DOM FRASCA

THEY call him Don Vitone. In Italian this means "the great one."

Though he has been called the great one for almost three decades, it is only within the past few years that the crown representing the title, King of the Underworld, passed to him from ailing, tired Frank Costello.

His real name is Vito Genovese.

A sallow, pinched, humorless man, he has done his best to avoid the spotlight of publicity.

Even the files of law enforcement agencies throughout the land are sparse—unrevealing.

"You guys got a license to annoy me?" he asked reporters trying to interview him recently.

There was no anger in his voice. It was as though he were merely cautious.

"That's typical of Vito," an undercover agent said when he heard of the incident. "He thinks a lot and does little talking.

"For years he has operated by remote control. His button-men (hirelings) take all the chances."

But now Vito Genovese finds himself indicted by a New York Federal grand jury as head of a multi-million dollar international narcotics ring.

Only weeks ago Paul Williams, ... Attorney, since resigned to joust in the New York political arena, described Genovese as "the nation's number one racketeer."

"I don't know what they're talking about," Genovese insists. "It's a bum rap all the way around."

How powerful is Vito Genovese—the great one?

What was his origin?

How did he emerge to gain the title of America's top racketeer?

Turn to GENOVESE, Page 11

'THE GREAT ONE'

Nation's 'No. 1 Racketeer' Operates by Remote Control

A DAY IN JAIL FOR EVERY YEAR

Continued from First Page

Here, for the first time, is the story behind his rise to power.

It is the portrait of a man who has cloaked his rise in the underworld with a mantle of respectability and, of late, humility.

He once lived in luxury that would be expected of a man known as Don Vitone. Until three years ago his home was a New Jersey mansion decorated with fabulous art treasures that included five-foot vases of Oriental porcelain of the costly Imaria pattern.

He now lives modestly, obviously to discredit reports he is worth upwards of $30,000,000 through interests in race tracks, the lucrative Italian lottery and a number of New York City night spots.

His home now is a one-story cottage on the New Jersey shore in the little community of Atlantic Highlands. It is worth no more than $20,000.

Genovese is quick to point to his modest home as proof of his honesty.

"Look how I live," he says humbly. "I'm just a small businessman. "I don't know why they keep bothering me."

Residents there accept him as a neighbor in good standing. Even the police chief has no harsh words for him.

"The town couldn't have a quieter citizen no matter who he might be," said Police Chief Sterling Sweeney.

The turbulent years when his gun was in his pocket and his women were in the palm of his hand were buried in the past.

Now 60, Vito Genovese has spent one day in jail for each year of his life.

Forty-two years ago he served 60 days for carrying a gun and never again has he worn prison denim.

"They'll never get anything on me again," he vowed to his friends as he returned to his East Side haunts after serving that sentence.

"They'll never put me away again."

He hit pretty close to the mark.

Arrested 3 Times for Homicide

Only once more was he convicted—also for carrying a gun—and then he drew a $250 fine. That was back in 1927.

Like magic, he has skirted the penalties of the law. He was arrested eight times since 1927, including three times for homicide, but none of the charges ever stuck.

The childhood days of Vito Genovese are lost in the shadows. He never speaks of them. But there is one story that still goes the rounds on the lower East Side when some of the old timers speak of "Don Vitone."

Vito Genovese, at the age of 12, was caught taking some pieces of fruit from a market-place of an Italian village.

The fruit vendor slapped him.

"Don't touch me again," young Genovese warned. "Nobody touches me. I'll give back the fruit but don't touch me.

"If you do, I'll kill you," Genovese said, his black eyes snapping.

The vendor let it go at that.

It is generally accepted by official sources that Vito Genovese was born in Resiglino, Italy, near Naples, on Nov. 27, 1897.

Genovese himself would seem to be undecided on this point. His marriage record lists Caserta, Italy, as his birthplace. At other times he has claimed Naples and Dardia, Italy.

At the age of 15, we can pick him out, pale and wondering, clad in a cheap, black suit in the steerage with other immigrants as the S.S. Taormina steamed into New York harbor.

He was one of thousands of his countrymen, young and old, emigrating to a land of opportunity. He settled in the Mulberry st., area, already a haven for many good Italian families.

To the confused souls of the Lower East Side neighborhood who were only days, months or a few years removed from the Old Country, the power of the dreaded Mafia — the "Black Hand" terror society—was unquestioned.

For a young man burning to get rich quick, there were always many small jobs to be done for the "mob," assignments which tended to build the ego and reputation of an 18-year-old who had picked up the language—slang and all, with remarkable speed.

His "connections" made of advancement for the go-getter.

SEN. McCLELLAN (DARK) QUIZZES GENOVESE
Prober Calls Him One of Top Gangsters in U. S.
AP Photo

MRS. ANNA PETILLO GENOVESE
Her Stormy Marriage Led to Court
International News Photo by Jack Lange

First Conviction at 19 on Gun Charge

And young Vito Genovese was a go-getter. At first he ran errands. He could be trusted. He was just 19 when he experienced his first conviction. The offense: carrying a gun.

Through his 20's, Vito Genovese built on his connections and his reputation. Soon his grasp stretched out towards the profitable Italian lottery. This was to be the foundation stone of his bid for wealth, power and recognition.

Accepted as a rising leader in the Mafia, he chose as his friends and associates hoodlums who would rise with him—Michele "Mike" Miranda, Anthony "Tony Bender, Strollo and Charles Lucky Luciano, who was later deported.

Genovese's first wife, Anna Regone, died of tuberculosis in 1931.

Not long after he married attractive, dark-haired Anna Petillo, his fourth cousin. It was the second marriage for Anna, too.

Strollo a Witness at Vito's Wedding

Witnesses to the ceremony in the New York City Municipal Building on Mar. 30, 1932 were Strollo and his wife-to-be, Edna Goldenberg.

The marriage of the 34-year-old Genovese and the 22-year-old Anna attracted little attention outside of underworld circles.

But a strange event had preceded the wedding. Anna Petillo became a widow just 12 days before she married Genovese.

Her husband, 25-year-old Gerardo Vernotico, had been found strangled on the roof of a six-story building at 124 Thompson st. His arms and legs were bound. A tightly drawn sash cord was around his neck.

A few feet away lay another victim. This was Antonio Lonzo, 33. It is believed that Lonzo was dealt the death penalty for having witnessed the slaying of Gerardo.

Neither slaying has ever been solved.

To live with Genovese and Anna Petillo went her 5-year-old daughter, Marie Vernotico.

"My daughter, Marie, can have anything I own," Genovese said on many occasions. She has never taken him up on the offer; in fact she has had little contact with her step-father.

Two children were born from Genovese's marriage to Anna Pe-

tillo which was to have a stormy climax 20 years later with Anna suing for separate maintenance.

A daughter is married and now lives in Atlantic Highlands. A son, also married, lives nearby in Shrewsbury with his family.

Vito Genovese hardly knew his children during their childhood. Leaving his family behind, he went to Italy in 1937, became a confidante of Mussolini, and stayed there through the war until 1945, when he was brought back to face trial for murder in Brooklyn. He beat that rap; too.

In full bloom now as a hoodlum, Genovese could look back on a charmed existence which showed only occasional arrests that were hardly worth the paper on which they were written.

Here are the only available details of Vito Genovese's arrest record over the years. In each case the charge was dismissed.

Apr. 22, 1918—Felonious Assault. Genovese was charged with pumping four bullets into another man in the old Aqueduct section of Queens. He listed his occupation as a laborer.

Apr. 25, 1924—Sullivan Law Violation. He was picked up at Kenmare and Mott sts. on the East Side with a loaded Spanish revolver tucked in his belt. He claimed he was in the grocery business and produced a permit for the gun.

Mar. 13, 1924—Vehicular Homicide. Genovese was charged with driving a car that ran down and fatally injured a man in Prospect Park, Brooklyn. A knife and a .38 caliber revolver were found in the car. He said he was a truckman.

Jan. 17, 1925—Burglary. He was charged with taking cigars valued at $502 from a store at 177 Mulberry st. He listed his occupation as a contractor.

Oct. 10, 1925—Homicide. He was charged with shooting to death a small-time hoodlum

THE CONQUERING HERO

How Vito Genovese returned to his native Italy in the role of a conquering hero is told in tomorrow's installment in this series on Vito's rise as a power in the underworld.

Subsequent articles will reveal:

How Vito Genovese beat a murder rap.

How he posed as a legitimate businessman.

How he made his big mistake—attending the Apalachin crime conclave.

named Gino Scioto. Genovese described himself as a merchant.

Dec. 4, 1934—Homicide. Genovese was charged with engineering the slaying of a hoodlum named Ferdinand "The Shadow" Boccia. The charge was dismissed in Felony Court when it developed there was not sufficient evidence for an indictment at that time.

But the slaying came back to haunt Genovese 10 years later, interrupting a seven-year sojourn in Italy where he became the toast of the Fascist government.

A Brooklyn grand jury had finally indicted him for the Boccia slaying. So it was homeward bound in handcuffs for the high-flying Genovese to face trial in Kings County Court.

But his luck still held. He won an acquittal on a legal technicality that will be explained in a later article.

TOMORROW: Don Vitone goes to Italy in style—and meets Mussolini.

C-27

How Vito Genovese Became 'No. 1 Racket

READ THE INSIDE STORY O

Cashword Prize Worth $9,950

Puzzle on Page 2; Rules, Page 6

NEW YORK
Journal-American

No. 25,680—DAILY MONDAY, AUGUST 4, 1958 10 Cents

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LATEST NEWS

(LATEST SCRATCHES)

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[New York Journal-American, August 4, 1958]
(Genovese Exhibit G)

AMERICA'S NUMBER ONE RACKETEER

Genovese Lives High as Pal of Fascist and Nazi Chiefs

While his wife watched over his U. S. interests like a mother hen, Vito Genovese spent eight free-spending years on "vacation" in Italy. How Vito became the toast of the Fascist hierarchy is detailed in this second article on his rise to the position of King of the Rackets.

By Edward Newman and Dom Frasca

Like every immigrant boy, Vito Genovese nurtured through long years of violence and struggle the dream of returning to the Old Country a wealthy man.

His wife, Anna, who was born in the United States, insisted she could take Italy or leave it alone.

By the Spring of 1933, Vito had established a solid foothold in the New York underworld. At 35 he was on his way to building a sizeable personal fortune. His subordinates in the mob began calling him Don Vitone — the great one.

So it was that Anna packed her designer dresses and Vito packed his custom-made suits and a satchel full of cash to board the S. S. Conte DiSavoia for a European visit.

He Goes in Style
'No Holes in Pants'

This was to be a combined business and pleasure trip. Genovese hoped to set up a plan for the release of Italian lottery numbers to the mob syndicate in New York before they were released to the newspapers. This could give the syndicate better control over the numbers play.

"We go in style, eh?" he boasted to the assortment of hoodlums that crammed the stateroom before sailing. He caressed a silk shirt.

"No holes in the pants this time," he said, his voice dropping to a whisper. "They'll know Vito is somebody."

Genovese waved a slip of paper in the air. It was a note of introduction from Mike Miranda to Achille Pisani, secretary of the Fascist party.

"You know he's the first one I meet," Vito said. "He's a big shot in the government. Knows Il Duce like a brother. Over there,

if you got the dough it's no questions asked."

Genovese and Pisani met in the town of San Guiseppe Ottaiani. The Fascist official was wined and dined.

Don Vitone wanted a feeling of status and acceptance. The members of a corrupt Fascist party officialdom, sitting on top of a virtually bankrupt government, were quick to embrace Genovese and his unending supply of cash.

"You want to know who really runs New York?" he asked them. "It's four people—me, Lucky Luciano, Mike Miranda and Dutch Schultz."

Reluctantly Vito ended that brief visit in August, 1933, and returned to the United States. He got back to his business affairs.

'Good for Million A Year, Anna Vows

The following years were spent in consolidating his control over the Italian lottery in New York and New Jersey.

"Vito was good for more than a $1,000,000 a year from the lottery racket alone," Anna Genovese revealed following a marital falling out in 1952.

By 1935 Genovese was associating only with the city's top racketeers. He was in frequent contact with Luciano, since deported to Italy, and Tony Strollo, who controlled gambling and money-lending along New York City's sprawling waterfront.

A Strollo henchman asked the syndicate for permission to open a "club" for Italian seamen. Considered the consultant on all matters Italian, Genovese was delegated the final decision. He gave his approval.

But a hitch developed.

Carlo Tresca, an anti-fascist newspaperman, had heard rumors of the club and suspected it would have a fascist taint. He sent word through the underworld grapevine that he would attack the club and those behind it in print. Genovese gave orders that the plan for the club be abandoned.

"Things are rolling along fine," he told the mob. "Right now I don't want trouble with this Tresca."

In 1937 the climate changed, however, and Vito decided the New York area was getting much too warm for him.

Luciano was convicted of heading a vast vice empire.

'A Little Vacation' Ends 8 Years Later

On Dec. 1, 1937, Special Prosecutor Thomas E. Dewey charac-

VITO GENOVESE

'LUCKY' LUCIANO

MIKE MIRANDA

'DUTCH' SCHULTZ

These Are the 'Four People Who Really Run New York,' Genovese Boasted in Italy.

terized Genovese as "an associate" of Luciano. Vito had moved his headquarters to New Jersey after the vice czar's conviction.

"I think I'll take a little vacation—maybe in Mexico," Vito told his friends.

Instead, leaving Anna behind to "mind the store," he headed for Italy.

He was to remain there for eight years, ostensibly living the life of a vacationing business tycoon.

Anna ran the lottery on his behalf from a plush apartment at 29 Washington Square W. Ironically, she was living directly above the apartment of Eleanor Roosevelt, wife of the President of the United States.

The money poured in. Reports say there was $30,000 to $40,000 in a bedroom safe at all times. The overflow went into a basement vault that often contained as much as $186,000.

As the cash piled up it was reportedly transferred to Swiss banks and to safe deposit boxes in Naples, Paris, Geneva, Monte Carlo, Manhattan and New Jersey.

Anna made frequent trips to Italy carrying with her as much as $100,000 on every voyage.

She found her husband the toast of the Fascist hierarchy.

DEATH OF A WITNESS.

How Vito Genovese beat a murder rap when a key witness died in a prison cell while under "protective custody" is told in tomorrow's exciting instalment in this series on Vito's rise to a number one position in the rackets.

Other articles will reveal:

The legitimate businesses that furnish the veneer of respectability.

The mistake that made Genovese the target for the nation's law enforcement agencies.

Vito entertained lavishly, and in turn was entertained by leading Fascists and Nazis. Count Ciano and Herman Goering were Vito's guests at the famous Alfredos in Rome.

Genovese dabbled in business by purchasing a power plant in the Nola district of Italy. He also bought a castle near Nola.

It was inevitable that Vito and Mussolini should meet. Vito had frequent contact with the dictator before our entry into World War II.

Flattered by attention from such high estate, Genovese opened his pursestrings wide. Among his contributions was $250,000 to

Mussolini for construction of a new municipal building in Nola.

Il Duce responded by bestowing on Genovese the ribbon of the Commendatores, the highest civilian award in Italy.

Newspaperman Carolo Tresca wrote articles expressing criticism of Vito's fascist connections. The New York mob rumbled with concern that Tresca was undermining Vito's reputation.

At 9 p.m., Jan. 11, 1943, editor Tresca was shot to death at the corner of 15th st. and 5th ave. Suspected as the trigger man was Carmine Galente. Galente is now a fugitive from an indictment charging him with being part of the narcotics ring allegedly headed by Genovese.

When the U. S. Army pushed in from the Italian beaches to bounce Mussolini and his friends out of office, Vito heard the call to the colors—the United States colors, that is.

He went to work as a civilian interpreter for the Allied Military Government.

At the same time he went to work on the Army Quartermaster Corps . . . allegedly organizing a ring that specialized in stealing truckloads of flour and sugar from military depots. Not only did the flour and sugar disappear, but the trucks as well.

Murder Indictment Waits in Brooklyn

On August 27, 1944, Genovese was arrested by CID Agent Orange C. Dickey on a charge of black-marketeering. But Genovese was never brought to trial.

A murder indictment against Genovese waiting in the office of the Brooklyn district attorney was given precedence.

Vito was charged with engineering the 1934 gangland execution of Ferdinand "The Shadow" Boccia.

There were reports that Army agent Dickey was offered $250,000 to "take it easy" on Vito. He refused.

Vito Genovese was glum but not despairing.

Nine months later Genovese was put aboard a U. S.-bound boat to face trial for the murder of Ferdinand Boccia.

In the interim a key witness had died "of an overdose of sleeping tablets" while in protective custody in a cell at the Brooklyn City Prison.

(TOMORROW: Vito's closest call—The Boccia murder trial.)

[New York Journal-American, August 6, 1958]
(Genovese Exhibit G)

AMERICA'S NUMBER ONE RACKETEER

Genovese Rose to Summit With Boost From Costello

Vito Genovese's answer to charges of racketeering has always been "I'm a respectable businessman." To maintain this pose he always made sure he could point to a connection with some legitimate business firm. He files an income tax return religiously. This is the fourth article in a series on Vito's rise in the Mafia hierarchy.

By Edward Newman and Dom Frasca

Vito Genovese stands alone today as the Big Man of American crime—there is no doubt about it.

One thing sets him apart from his underworld contemporaries. It is his nationwide web of power—his "remote control" that extends to every corner of the continent.

Time and again, undercover agents have found contacts between Genovese and top mobsters in rackets throughout the United States.

No other American gangster has access to such power.

But even in the underworld it takes time to attain such power.

Beating the rap at his 1946 trial for the gangland slaying of Ferdinand "The Shadow" Boccia made Genovese a bigger man than ever before. Yet the King's sceptre was still held firmly by racketeer Frank Costello.

Paid $38,000 Cash for Jersey House

Vito and his wife Anna set up house-keeping in a home on Ocean blvd. in Atlantic Highlands, N. J.

Genovese paid $38,000 in cash for the house. He also spent $32,000 on outside improvements, and $25,000 on such interior improvements as Italian marble staircases, wall murals and statuary.

Into the home went dozens of pieces of custom-made furniture. Among them were a $15,000 bedroom suite in tufted pink satin and a $12,000 dining room set. There was a 120-piece dinner set of Limoges china in gold and chartreuse; a 33-piece coffee service and a 30-piece tea service in Limoges heavily encrusted with gold.

A $1,200 pair of pink and white carved alabaster lamps with figures of dancing girls

VITO GENOVESE
Uses "Remote Control"

FRANK COSTELLO
Gave Vito Equality

and women astride a sea shell helped light the cluttered 40-foot living room.

"The living room is only 38 feet," Vito protested when sued for separate maintenance by his wife in 1952. "There's nothing fancy about the house. It's just livable."

Before the marital breakup Genovese maintained a tight hold on the Italian lottery while expanding into other spheres. He allegedly moved in to grab a cut on waterfront gambling and shylocking activities.

Some bookmakers in the Metropolitan Area complained they had to "clear it with Vito"—always through an intermediary—to keep safe at their locations. Any unusual problems—beside the ordinary run of short payoffs, late "time," etc.,—were brought to Mike Miranda at an East Side restaurant.

Mafia-Wise Cops Saw Star Rising

Genovese also "invested in narcotics," according to Anna.

By now he was known to the New York Police Department as B-59993, to the FBI as File No. 861267 and the Federal Bureau of Narcotics as No. 130 on their list of suspected major narcotics violators.

UNWANTED PUBLICITY

Vito Genovese becomes careless and is caught in a roundup of hoodlums at a mountain-top crime conclave . . . The Federal Government charges him with heading a vast international narcotics ring. Tomorrow's final instalment on the rise of Vito Genovese tells how he has been caught up in the storm of publicity he has shunned throughout his lifetime.

Except for a handful of police investigators close enough to the Mafia to recognize Genovese as a rapidly rising star, few people in or out of law enforcement circles were yet aware of him.

"I'm just an average American businessman," Vito tells investigators and neighbors. "I just barely make a living."

This is the face that Vito Genovese has always turned toward the public, that of the honest and humble man.

Before World War II his front was the Vito Genovese Trading Company on the lower East Side. This has since gone out of business.

Since the war he has been connected, for the record, with several going business concerns.

His first contact was with the Colonial Trading Co., a firm that buys waste paper and rags for

resale to paper mills. Title to the company was formerly in the name of Vito's brother, Michael.

"I'm general manager," Genovese explained. "All I get is a salary of $125 a week."

NOW INTERESTED IN L. I. STEEL FIRM

He insisted that the executive nature of the job didn't require him to show up at the firm with any regularity.

"I get my check by mail," he said.

In the mid-1950's he became associated with the Erb Strapping Co., which packages food products for export.

These reporters have learned that his latest venture into legitimate business is with a steel firm in Amityville, L. I.

Vito is treasurer of the company.

"I had to borrow $32,000 from my brother, Mike, to get into the business," Genovese claims. "Myself, I'm a poor man."

Vito's income tax returns reflect his pose as a respectable businessman. They range from a claimed income of $6,881 in 1952 to $14,000 in 1956.

Between his acquittal in connection with the association of Ferdinand Boccia, and 1949, Vito was virtually forgotten by public and press alike.

Attended Dinner Given by Costello

In January, 1949 Frank Costello, then considered the nation's rackets head, sponsored a $100-a-plate dinner at the Copacabana. The proceeds were to go to the Salvation Army.

Attending the dinner was a host of city officials and top-drawer politicos, including eight judges and a borough president.

Newspaper accounts of the affair mentioned that a man named Vito Genovese, reputedly a racketeer with a long police record, was met at the door by a special committee and escorted to a reserved seat.

"This is nice, boys," Vito said then peering from behind a pair of amber-tinted glasses. "But why all the bother for me. Just put me in any quiet corner."

The party was interpreted by most observers as a demonstration by Costello that he still ran the works in New York.

The underworld was quicker to get the point.

Vito Genovese was being introduced as being, at the least, on an equal footing with Costello in the mob hierarchy.

(TOMORROW: Two gangland shootings and an upstate crime convention throw Genovese into the spotlight.)

[New York Journal-American, August 7, 1958]
(Genovese Exhibit G)

AMERICA'S NUMBER ONE RACKETEER

Apalachin Put Genovese in Spotlight

The presence of Vito Genovese at the Apalachin Mafia convention and his recent indictment charging him with heading a vast narcotics conspiracy have brought his position as an underworld leader into new perspective.

By Edward Newman and Dom Frasca

From the day when Vito Genovese became a top figure in the mob hierarchy, he pursued the myth of respectable anonymity with an air of dogged desperation.

In 1952, however, he received a rude and unexpected surprise.

His wife, Anna, instituted a separation suit in the New Jersey court after 20 years of marriage. She asked that Vito be ordered to pay her $300-a-week alimony.

During the course of that marital battle, Anna testified to Vito's control of the lottery and waterfront rackets. She named him as the behind-the-scenes owner of numerous New York City night clubs.

Denied Rackets Role

Vito was quick to deny any association with rackets or hoodlums, but conceded that during their marriage he had argued frequently with Anna.

"I didn't like the kind of people she was going around with," he told the court without cracking a smile.

When even a last-minute peacemaking attempt by Frank Costello himself failed to save the marriage, Vito sold his mansion in Atlantic Highlands and affected the simple life by moving into a five-room white clapboard cottage on the other side of the tracks in that town.

* Accompanying photograph of Gigante omitted in printing.

For years Genovese had avoided the spotlight of publicity. His trouble with Anna was a bitter dose to swallow.

But once again Don Vitone—the leader—melted into the background. Shortly before his separation from Anna he had attended a Mafia convention at a remote point on the Florida Keys. Now he was avoiding gatherings of known racketeers until things cooled off.

Shy of Telephone

As he always had been, Genovese continued to be discreet in using the telephone. In this respect he has remained discreet to this day.

A check of hundreds of toll calls made by him show little contact with suspected racketeers other than Anthony "Tony Bender" Strollo. There are calls to Anthony Russo, of Caldwell, N.J., a known associate of Genovese.

Russo, in turn, has been in contact with Charles "The Blade" Tourine. A lower echelon Mafia leader last seen in the gambling casinos of Havana, Tourine is wanted for questioning in the slaying of Albert Anastasia.

Vito's toll calls also show contact with juke box firms in New York City and Michigan.

Hierarchy at Wedding

To show in what circles Vito moved we can look in on a June, 1955, wedding of a daughter of Joseph Profaci, a delegate with Genovese to the Apalachin convention of Mafia leaders last November.

Among the other guests at the wedding were: labor racketeer Johnny Dio; Mike Miranda, John Ormento, currently a fugitive from the same narcotics indictment accusing Genovese of being head of an international dope ring; Anthony "Tough Tony" Anastasia, boss of the Brooklyn docks; Angelo Polizzi, Michigan rackets boss; Aniello "Mr. T" Ercole, Brooklyn mobster, and Angelo Mali of Detroit, one of the few surviving members of the Prohibition era "Purple Gang."

Vito was beginning to move around in the best circles again.

The mobsters were holding informal meetings in front of the Alto Knights Social Club, Kenmare and Mulberry sts., in Manhattan's lower east side. To everyone's delight Genovese began showing up to chat with them.

The arrival of Vito, dressed in a blue business suit and wearing dark glasses, was a signal for all conversation to cease. There was

rush to open the door of his ar. A reception line of outretched hands formed along the dewalk.

sed Gigante's Car

In January, 1956, an undercover operative noted in his report that Genovese, who was sually driven to the street-orner meetings by various New ersey associates, was now being ropped off by a car with New ork registration.

A quick check showed the car o be owned by Vincent "The hin" Gigante, a big blubber of a an, an ex-boxer turned small-me hoodlum.

This notation in a filed and lmost forgotten report was to ake on significance when Gigante as accused of taking a potshot Frank Costello on May 2, 1957.

A witness at a General Sessions ourt trial identified Gigante as e gunman who bungled the Cos-llo shooting. He was acquitted, owever, when Costello, whose ull was creased by the bullet, fused to make any identifica-on of Gigante.

e Word Was Out

In underworld circles the word d been around for some time at Gigante was "Vito's boy." Gigante came recommended by Tony Strollo.

In the Spring and Summer of 1957 the underworld rumbled with attempts by Albert Anastasia, one-time Lord High Executioner for Murder Inc., to take over the rackets along the New York-New Jersey waterfront and in upstate New York. He was trying for a quick stake of several million dollars that would buy his way into the lucrative Havana, Cuba, gambling strip.

Lost Citizenship

Two gunmen took him out of the picture with a fusillade of bullets on Oct. 25, 1957, as he sat in a barber's chair in the Park-Sheraton Hotel.

A few weeks later, Vito Genovese, grown older and perhaps a bit more careless, was surprised with 64 other Mafia leaders at the now-celebrated mountain-top crime conclave at Apalachin, N.Y.

Vito's citizenship was revoked two years ago on the ground that he concealed his criminal record when he applied for naturalization. Six months before the Apalachin convention, he had filed for new citizenship papers.

Not only has there been no action on Vito's application for restoration of citizenship, but

there is a possibility that deportation proceedings may follow his indictment by a U. S. Grand Jury.

Following the embarrassment of Apalachin, Vito retired behind the shutters of his Atlantic Highlands cottage.

His most recent appearance was in Washington, D. C., before the Senate Rackets Committee headed by Sen. John McClellan (D.-Ark.).

Genovese took the Fifth Amendment on more than 150 questions thrown at him by Committee counsel Robert Kennedy.

Then, on July 8 last, the picture of Vito Genovese as a simple, struggling businessman and average citizen was faded more.

He was arraigned in Federal Court on an indictment charging him with being the head of a vast international narcotics ring.

The conspiracy indictment named 36 other defendants, including the fat Gigante, described by then U. S. Attorney Paul Williams as Vito's protege and "a rising star in the underworld."

For the first time in twelve years Vito Genovese—Don Vitone, the great one—faces a charge that could ultimately put him behind prison walls.

THE END

[New York Journal-American, October 23, 1958]
(Genovese Exhibit G)

THE FABULOUS JUTE BOX 'EMPIRE'

Genovese's Name Used to 'Pressure' Many Victims

Mobsters hiding behind the respectability of union charters pose the biggest threat to the fabulous juke box industry. In this article, the N. Y. Journal-American exposes an ex-convict as the head of a powerful Teamsters local that is making its presence felt in the juke box empire.

By James D. Horan, Dom Frasca and John Mitchell

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N. Y. Journal-American

An ex-convict, thrice arrested, turns up as head of a powerful Teamster local . . .

A gruff voice strikes fear in the heart of a tavern owner with a casual allusion to Vito Genovese, "King of the Rackets" . . .

The vice-president of a so-called "labor union" confesses he does not know the meaning of "collective bargaining" because in reality he is simply an unemployed truck driver . . .

An order to show cause charges a lieutenant of Jimmy Hoffa and Joint Council 16 of the International Brotherhood of Teamsters with conspiring to exert pressure in the coin machine industry . . .

A Supreme Court justice angrily chastising a phony "paper local" says of its attempt to muscle into the metropolitan juke box empire:

"Completely disgusting . . . a perversion . . . It is disgusting . . ."

These are the highlights of a two-year labor battle for control of the organized coin machine business in New York.

These are some of the amazing developments which investigators of the Senate Rackets Committee have been studying in their probe of hoodlum infiltration of music and amusement machine enterprises.

The investigators, along with Assistant N. Y. District Attorney Harold Birns, are particularly interested in determining to what extent a number of so-called "labor" organizations have been aided by key underworld figures in their alleged attempt to monopolize the trade.

Ripe for Hoodlums

Samuel Mezansky, special counsel for Music Operators of New York—an association that has served members of the industry for more than 20 years—said during an interview in his Empire State Building office:

"Hoodlums find this field is ripe for them. They deal with owners of taverns and feel they can easily intimidate them by mentioning a name, especially in some of the tougher neighborhoods of Brooklyn."

Mezansky was referring to affidavits filed in a motion for an injunction against Local 531 of United Industrial Unions in April, 1957.

The affidavits, which are still on file, charged the defendant local sent to juke box locations "strong arm" men who served notice that Vito Genovese, Jos Stretch and Carmine Lombardozi were behind their organization.

This, the affidavit continued, "has created a climate of fear and worry in the entire industry."

Joe Stretch (his real name is Stracci) is a notorious garment industry racketeer.

Lombardozi gained notoriety by attending the infamous underworld conclave at Apalachin, N. Y., last November. He is currently occupying a cell for refusing to answer questions put to him with immunity by the N. Y. State Crime Commission.

Genovese, alternately called "King of the Rackets" and "Mr. Mafia," hardly needs an introduction. At his Atlantic Highlands, N. J., home, awaiting trial on a narcotics indictment, he angrily told these reporters he knows "nothing" about the juke box industry or any union. He said:

"This is just another instance of people using my name without my knowledge."

An injunction against Local 531, restraining its agents from picketing juke box locations, was issued by Supreme Court Justice Samuel Coleman in 1957.

In his opinion, Justice Coleman wrote: "It is clear that the defendants do not constitute a bona fide union. Instead of having the interest of employes at heart, they were obviously concerned with . . . organizing machine box owners."

During the trial of this complaint, however, Mezansky did not refer to the affidavits containing the names of known racket

eers. A reporter this week asked him why he rejected such explosive material. He replied:

"It would not have helped our case a bit. The people involved were afraid to testify."

For a short time during the latter part of 1957 Music Operators of New York (MONY) and its affiliate, Local 1690 of the AFL-CIO, enjoyed a period of relative peace.

Then suddenly, a new "labor organization" emerged in the coin machine field. It called itself Local 19, Cigarette and Coin Vending Machine Union, Federated Service Workers.

Its seven charter members included an unemployed truck driver and a ship scaler who were soon to exhibit a shocking lack of knowledge about labor organizations in general, and the coin machine industry in particular.

On Feb. 26, 1958, the officers of Local 19 found themselves facing MONY attorney Mezansky in Justice Arthur Markewich's session of Supreme Court.

Once again, the action was awarded in favor of MONY, and an injunction was slapped on Local 19, prohibiting its agents from "organizational" picketing.

The record of this trial reads like "Alice in Wonderland."

In the course of testimony, John R. Caruso, vice-president of the now-defunct Local 19, told the court he was an unemployed truck driver who consented to became a charter member because "a friend" needed seven names to organize a union.

"Did you know anything about conditions in the coin machine industry?" Mezansky asked him.

"No," said Caruso, "I did not."

"Did you ever read the (local's) constitution?"

"I never read it personally."

"Do you know what a collective bargaining agreement is?"

"No, sir."

"Do you know whether anybody paid any dues or initiation fees to Local 19?"

"Nobody did."

Then Mezansky turned to Francis Nunziato, a member of the executive board of Local 19, who said by occupation he was a ship scaler.

Issues Injunction

Referring to Nunziato's role as an organizational picket, Mezansky asked, "Did you know what you were doing?"

"In a sense I believ not," came the bewildered reply.

Justice Markewich, denouncing the activities of Local 19 as "disgraceful," promptly issued an injunction that brought an end to the picket lines. The local quietly slipped from the scene.

But before the final judgment was officially filed, another organization began to move into the limelight—United Coin Machine Operators of New York.

Headed by Eugene and Bert Jacobs. Brooklyn juke box operators, this organization aligned itself with Local 266, Automatic and Vending Machine Employes Union, affiliated with Teamsters International.

In an affidavit filed in Supreme Court last May, Ray Knoss, a member of Music Operators of New York, charged:

"Persons engaged in the (coin machine) business were soon warned that this powerful combination, by threatening, picketing and stopping beer deliveries by other locals affiliated with International Brotherhood of Teamsters, would be compelled to favor location owners in good standing with this combination."

Knoss accused Local 266 and this new group of picketing eight locations in which his machines were installed.

UNDERWORLD STOCKHOLDERS

Tomorrow's concluding instalment of "The Fabulous Juke Box Empire" explores the shadowy history of a lucrative coin machine distributorship whose list of stockholders has included a gambler, two ex-convicts and an "Apalachin 65" mobster with powerful underworld connections.

These charges and accusations resulted in a Supreme Court stipulation in Knoss' favor.

Shortly thereafter, the Jacobs brothers turned up as officers of another trade association called Associated Amusement Machine Operators of New York, Inc.

The association is currently active in the industry and has a collective bargaining agreement with Local 266.

These reporters, during a two-month investigation of the juke box industry, learned that the president of Local 266, Joseph DeGrandis, is an ex-convict.

In July, 1939, he was arrested for receiving stolen property. The following month, free on bail, he was picked up on charges of

iolating the Sullivan Law and isorderly conduct.

The two latter counts were dis-nissed.

DeGrandis was convicted of he stolen goods offense in 1940 and sent to prison for three years.

Seven years out of jail he was indicted on a Federal charge of conspiracy to operate a still. The indictment was dropped.

Interviewed in the local's office, 55 W. 42d st., DeGrandis said of his conviction:

"As far as I'm concerned, I was framed."

DeGrandis also disclosed that Local 266's books have been scrutinized by investigators of the Senate Rackets Committee.

Today, the Teamster local figures in a new complaint by Ray Knoss of MONY. It was learned that Mezansky has served Teamster Joint Council 16 boss John O'Rourke with a complaint accusing him of conspiring with Local 266 to force certain "favored operators" on the industry.

The complaint alleges the Teamsters have stopped beer and liquor deliveries as a means of compelling coin machine location owners to accept DeGrandis' local and "individuals acting in concert" with it.

Mezansky was asked by these reporters if any violence had occurred recently in the labor arena of the coin machine industry. He said:

"Hoodlums don't have to resort to violence. Their appearance in a location owner's establishment is sufficient."

(Tomorrow: The Mysterious Runyon Sales Co.)

[New York World-Telegram, November 13, 1958]
(Genovese Exhibit H)

Hoods Are Still Running From Apalachin 'Sick-Call'

(November 13, 1958)

But Mystery Lingers
On First Anniversary

By Fred J. Cook,
Associated Press Staff Writer

Tomorrow is the first anniversary of the Apalachin barbecue that roasted gangdom.

Just a year ago tomorrow, 60 underworld delegates rallied about the barbecue pit outside the hilltop mansion of Joseph Barbara, Sr. But before the steaks could be singed, the law appeared upon the scene.

The mob convention broke up in some fast footwork at the flash of the first badge, and the broken field running ever since has been dazzling. The chase has wound in and out of courts, in and out of grand jury rooms, in and out of hearings before crime commissions.

The results haven't been very informative, nor at all conclusive, but they've certainly been harassing. They've played merry hob with mob business.

Law's Actions

The law has moved in one way or another against more than half of the delegates who met at Apalachin. Seven are serving civil jail terms for refusing to talk. Another is behind bars as a probation violator.

Four have been indicted on criminal contempt charges. Four more are among the 37 indicted as operators of a vast narcotics ring. Eight delegates and two relatives have lost New York State liquor licenses. A dozen have surrendered pistols and permits.

At least 11 have left the state and their families and their businesses. And, most drastic of all, the federal immigration service has moved to deport four and may act against several others.

Impressive Toll

Though some of the actions overlap, it is an impressive toll for a case in which, despite all the probes, there still isn't th

VITO GENOVESE.

JOSEPH BARBARA Sr.

ALBERT ANASTASIA.

MIKE MIRANDA.

slightest evidence what the mob conclave was all about.

Efforts to induce the Apalachin 60 to talk have served mainly to illustrate their fondness for the Constitutional guarantees of the Fifth Amendment against self-incrimination. Those who have talked, a little, have bored listened with an identical refrain.

To listen to them, it all happened simply, innocently—just this way:

Joseph Barbara, Sr. was their friend. He had been ill with a heart ailment. They had decided to stop off at Apalachin to see how good old Joe was doing. And when they got there, you could have knocked them over with a well-broiled steak they were so surprised to find so many of good old Joe's friends had had the identical idea.

Obvious Fairy Tale

Investigators sniff at the obvious fairy tale. They suspect the gangland convention was necessitated by the lethal misfortune that had overtaken Albert Anastasia, the feared Lord High Executioner of the underworld, just three short weeks before.

When Anastasia switched roles and became the receiver of bullets in the barbershop of a midtown New York hotel, a huge gap was created in the upper echelons of gangdom. The void had to be filled, new territories had to be delineated.

This is the official theory, but proof—that is another matter.

You don't get proof from the lips of Apalachin's premier delegate, Vito Genovese, once designated by Thomas E. Dewey as "the king of the rackets."

And you don't get proof from Mike Miranda, a former Anastasia henchman, or John (Big John) Ormento, a garment district shakedown artist, or Joe (Joe Bananas) Bonanno, pal of the international narcotics czar, Charles (Lucky) Luciano.

Host Still Silent

Some of the difficulties of the law are graphically illustrated by its dealing with Apalachin host, Joseph Barbara, Sr. Barbara was arrested a couple of times in the '30s in Pennsylvania on suspicion of murder, but the charges went out the window when eyewitness identifications didn't stand up. In the aftermath of Apalachin, probers have

not yet been able to drag him into the witness chair.

Barbara's heart condition has been his shield. Doctors agree his life might be in jeopardy if he risked the tensions of testimony, but Barbara, according to the new State Crime Commission, has now recovered sufficiently to drive about the countryside, though he still takes to his bed at the flutter of a subpoena.

The commission is still after him, still trying to learn from his own lips how surprised he was when all those good friends turned up at the same time.

Record-Breaker

The indications are that the rumblings of Apalachin will go on and on and that the barbecue high in the rural hills will go down in underworld history as sick-bed record-breaker.

For Apalachin, while it didn't prove anything, exposed to the gaze of a startled public the sinister fact of mammoth underworld conspiracy.

And for the underworld that kind of publicity—and the excited public reaction it causes—is as lethal as the bullets of Anastasia.

[NBC Television News Broadcast, December 1, 1958]
(Tr. P169-P171; App. 83a-85a)

6:30 pm local-tv...12/1...gf page ONE

Good evening.

This is the news we covered

today.

The scene was Federal Court in

Foley Square.....

(SIL FILM GENOVESE)

...and this was the day originally

set for a trial to begin....

the trial of Vito Genovese....often

called the "reputed rackets king" --

and 17 other defendants....all charged

with being members of an international

narcotics ring.

All were indicted last July....

we drew close to the 60-year-old Genovese

and his lawyer Anthony Callandra.

(OPEN NATURAL SOF AND RUN TO END)

~~Don't know if there will be trial -- yet today~~

~~a few days or will begin next week.~~

THEY'CC STAR-

PICNNG / WEDNCD /

---- IND WILL TAKE

THOUGHT CLOSING MONDAY.

[New York Herald Tribune, February 13, 1959]
(Genovese Exhibit X)

Apalachin Secret Out: Mob Held Death Trial But Spared Racketeer

Offender's 'Sentence' Cut to Fine

N. Y. Policeman Breaks Mystery

By David Wise

Washington, Feb. 12.—In the first major break in the mystery of the Apalachin, N. Y., mobster convention, a New York City police lieutenant testified today that a Brooklyn delegate, under a gangland death sentence, waited in Joseph Barbara's garage while an underworld court debated his fate.

The Senate Rackets Committee was told that the underworld supreme court commuted to a $10,000 fine the death sentence of Carmine Lombardozzi, who emerged in today's hearing as a major figure in the juke box rackets.

The electrifying testimony came from Lt. James S. Mooney, of the New York Police Criminal Intelligence Division. He testified that the charge against Lombardozzi "related to the juke-box industry."

Source Kept Secret

The thirty-seven-year-old police officer did not explain how this information was obtained, nor did the committee offer any clews. However, committee counsel Robert F. Kennedy said it had been obtained from "reliable" sources and added that New York police "have more information they can't disclose" about Apalachin.

Mr. Kennedy called Lt. Mooney's testimony "the first information on what took place at Apalachin." There has been speculation that the gangland convention at Barbara's home Nov. 14, 1957, was called partly to carve up the empire of Albert Anastasia, executioner for "Murder, Inc.," who was himself executed on Oct. 25, 1957 as he sat in a barber's chair in New York's Park-Sheraton Hotel.

However, it was learned that committee investigation analyz-

ing the background of the sixty-odd delegates to the crime convention have discovered a pattern of involvement with the juke box and coin-machine industry. As in the case of Frank Zito, of Springfield Ill., who took the Fifth Amendment yesterday, the juke box link was not at first apparent where the mobsters operated through dummy companies and fronts.

Data Given Senators

It was also learned in New York today from a reliable source in the Police Department that the same informant who told Lt. Mooney of Lombardozzi's trial also said Lombardozzi's actions had been the principal reason for holding the Apalachin meeting. The police source said this information had been given to the Senate investigators in a closed session.

Lombardozzi, an ex-convict whose record of twenty-one arrests includes vehicle homicide and "dangerous weapon with a pool cue," emerged in other testimony today as an important figure since 1952 in both juke box and waterfront racketeering. Mr. Kennedy said the gangster is "a chronic user of marijuana."

Lt. Mooney read from a prepared statement typed on a single sheet of white paper at-

Continued on page 13, *column* 2

Apalachin

(*Continued from page one*)

tached to Lombardozzi's police record. He testified:

"The New York Police Department is in possession of some information concerning the notorious individuals gathered at the home of Joseph Barbara at Apalachin, N. Y., Nov. 14, 1957. The information indicates that the following took place:

"One of these individuals, influential in the juke box field, was called to account for his activity. This person was previously scheduled to be killed, but instead his situation was considered by individuals present present at Apalachin.

"The offender was not allowed to be present or to participate in the hearing, but was required to remain in Barbara's garage to await the verdict. The court decided to fine the offender $10,000. Our present information indicates that the offender was Carmine Lombardozzi."

Sen. John L. McClellan, D. Ark., committee chairman, asked

Q. He was fined $10,000 instead of ordered killed?

A. Yes sir.

Q. At Apalachin?

A. Yes sir.

Q. Where did the $10,000 go?
A. If we knew that answer we'd have the whole story of Apalachin.

Q. Presumably, it goes to some central fund controlled by the higher ups of the underworld?
A. I believe it does.

Lt. Mooney's testimony was interrupted briefly by Robert J. Cofini, of the committee staff, who gave testimony that Mr. Kennedy indicated might tend to support the information given by Lt. Mooney. Mr. Cofini said Lombardozzi withdrew $5,000 from his Brooklyn bank on Dec. 2, 1957, less than three weeks after the mobster meeting.

He testified that an examination of Lombardozzi's account at the Manufacturers Trust Co. in Brooklyn showed that two checks in amounts of $2,000 and one check for $1,000 was withdrawn on that date. He also said Lombardozzi withdrew a check for $2,171 on Nov. 6, a date just preceding the meeting.

Mr. Cofini said the bank did not keep records of the checks and he was unable to find out to whom they were paid.

Then Sen. McClellan asked Lt. Mooney:

Q. What was he charged with?
A. The information we have related to the juke box industry.

Q. You don't know what code he was supposed to have violated?

At that point, Mr. Kennedy cut in to say that Lt. Mooney knew more but was not at liberty to testify further. The officer is one of four New York police who have been working with the committee since May.

Lt. Mooney testified before this exchange that Lombardozzi traveled to Apalachin with Natale Joseph Evola, of Brooklyn; Joseph Riccobono, of Staten Island, and Frank Cucchiara, of Boston, all delegates. Lombardozzi "stayed overnight with them at the Dell Motel," Lt. Mooney said.

Lombardozzi has been in Civil Prison in New York since August on a contempt charge for refusing to tell the state investigation commission what went on at Apalachin. Six other delegates are in the prison for the same reason.

Lt. Mooney said "Lombardozzi's "associates" have included Anastasia and his brother Anthony "Tough Tony" Anastasia, Brooklyn pier boss; Gus Frasca, George Smurra, Sabato "Little Mitzie" Muro, Paul Castellano, of Brooklyn, and Mike Miranda, of Queens. The last two were also at Apalachin and are in jail with Lombardozzi.

The witness said Lombardozzi's arrests also include bookmaking and absence without leave from the United States Army.

The testimony linking the forty-five-year-old racketeer to the juke-box industry came from today's lead-off witness, Benjamin Gottlieb, owner of the Majestic Operating Co., Brooklyn, which leases juke boxes and vending machines.

Mr. Gottlieb said he paid Lombardozzi and his brother, Daniel Lombardozzi, and a third man, Pat Esposito, $43,000 to buy a juke box and vending machine route in Brooklyn. This gave Mr. Gottlieb the right to place his machines in certain "locations."

But, he said, a character named "Miami Phil" began muscling in the locations. Mr. Kennedy identified "Miami Phil" as Phil Corbisiero, who died in 1957, with a funeral attended "by many leaders of the underworld."

Mr. Gottlieb said he complained to Carmine Lombardozzi of the trouble, which began when Squire's Bar in Brooklyn switched over to "Miami Phil's" machines. He said a meeting ensued in a Brooklyn bar attended by himself, Lombardozzi and "Miami Phil." He said the other two men spoke in Italian and finally told him there would be "no further trouble."

But, he said, he didn't get the "location" back and later lost another one to Corbisiero at the Ball Field Tavern near Ebbets Field. "Miami Phil," he testified, had been getting his machines in by promising owners they would have no picketing trouble with Local 531 of the United Industrial Union.

Again, Mr. Gottlieb testified, he took his troubles to Lombardozzi, who this time set up a meeting at Lombardozzi's home with Alex Cohen, president of the union. He said the union president said he could get his locations back if he purchased union stickers to place on his machines. Mr. Gottlieb said he turned down the deal.

Later on, he said, he did make a $150 payment to "Ernie the Hawk" to get a machine replaced in a bar on Fourth Ave., Brooklyn. Mr. Kennedy identified the man as Ernie Rupolo "a gunman for Mike Miranda." He said "Ernie the Hawk" performed a murder for Vito Genovese, reputed Mafia leader, but never was convicted because the chief witness against him was poisoned in jail.

Lt. Mooney also testified that Lombardozzi was deeply involved in waterfront rackets, and has assisted big shipping companies in settling strikes as a "labor consultant."

He said Lombardozzi's Mobile Marine Power & Equipment Co. owns exactly one asset—a $10,000 generator which he rents to the Monti Marine Corp. "for $750 a week." Monti Marine, the witness said, does repair work on many large ships that come into the Port of New York.

Mr. Kennedy said the "rental" was obviously a cover-up for labor union payoffs. He also suggested that New York State tighten up its laws to curb juke box racketeering by both unions and operators.

Again today, witnesses told the committee that unons of juke box service men are really formed to enrich union bosses and protect the owners associations by providing convenient picketing when an outside owner tries to take over a location. One former union official, Abraham Gilbert, testified he engaged an "elderly man" as a "steady picket" for this purpose.

Another witness, Eli Kasper, testified that racketeers are conspiring with Teamster Local 266 to take over the entire coin machine industry in New York. He said the "Jacobs" brothers. Eugene and Herbert, have gained control of the Associated Machine Operators of New York, the big industry association, and are working with the Teamsters.

He said Eugene Jacobs once tried to persuade an operator to join the association by telling his wife that if he did not, "he wouldn't have to go to the dentist to have his teeth removed." The hearings resume at 10:30 a. m. tomorrow.

[New York Herald Tribune, February 15, 1959]
(Genovese Exhibit S*)

Probers Baring Web Of Crime Syndicates

Justice Department's Task Group Finds 'Spheres' in Underworld

By Richard C. Wald

Federal authorities are convinced that there are several criminal syndicates working throughout the nation at the present time.

Each of these syndicates—and the best known, the Mafia, is only one of them—operates in its own sphere. Their tacit agreement to leave each other alone except for their frequent working relationships amounts to an invisible government of crime in the United States.

This is the view of the Attorney General's Special Group to Prosecute Organized Crime, based on evidence it has collected since it was set up last April as a temporary body to proceed nationally against the country's top 100 racketeers. The Justice Department is now seeking to extend its life in the next Federal budget.

Explains Funds Need

Ordinarily, the Justice Department and the head of the special group, Milton R. Wessel, refuse to make any comment at all on its work. However, pressed by the newspaper to explain why the group should get more funds from a tight Federal budget, Mr. Wessel said:

"It would be improper for me to discuss any pending matters. Those will be made public only at the proper time and place.

"But for many years, crime syndicates have operated as a cancer on our society. Their continued existence itself is proof that the Attorney General's effort to develop a new and concentrated approach is of first importance."

Mr. Wessel stressed the fact that his group of nineteen lawyers "is but a task force, the basic philosophy of which is

* Photograph of Milton R. Wessel omitted in printing.

operate only in new areas and to avoid duplicating the work of others."

However, its discoveries so far have convinced him that crime syndicates are fact, not fiction; that although each one operates in all parts of the country they tend to have spheres of influence respected on all sides because "there's enough for all"; and that this co-operation may sometimes make it seem as though there is a single controlling syndicate, which there is not.

Mr. Wessel, a thirty-four-year-old lawyer who looks more like a graduate student than a chief investigator, declined to divulge any further information.

The activities of his group, however, have not been kept entirely secret. From information available from various sources here and in the three other cities in which it works a fairly full picture of the new racket bureau can be drawn.

Started in April

It was put into operation last April. The largest single regional office is in New York under the direction of William Esbitt, forty-seven, a former Assistant United States Attorney who was called back from private practice to take the job. Like the heads of the other regional offices, he was chosen by Mr. Wessel.

The next largest office is the Western region, with headquarters in Los Angeles, under Lloyd F. Dunn, forty-one, a former chief of the criminal division of the United States Attorney's office in California.

The Southern region, with headquarters in Miami, is under the direction of Joseph P. Manners, thirty-five. The Mid-West, with headquarters in Chicago, is directed by Richard B. Ogilvie, thirty-six.

Get Police Aid

The four regional directors and Mr. Wessel have fourteen lawyers to help them. That's all. They have no guns, no wire-taps, no secret anti-crime devices and few special powers. What they have is a knowledge of the law, a nation-wide view of crime and the co-operation of law enforcement agencies at all levels of government.

In the beginning they merely sought information, whatever any one had. From it, patterns began to emerge. They looked, as investigators and prosecutors always look, for specific crimes that might have escaped other agencies working in more restricted areas. These they turn over to enforcement agencies.

But above this, they are out to find the syndicates that control criminals rather than crime; the

underworld organizations that operate for mutual protection. Members of one group apparently enter "business" alliance with members of another for a specific operation—a gambling hall in Cuba that may involve Vito Genovese and Meyer Lansky, a narcotics operation that stretches from Harlem to Turkey.

Face Code of Silence

What the Attorney General's group wants to do is strike at the organization that binds the syndicates together. The syndicates' greatest protection and the law's worst stumbling block is the code of silence.

Apparently, the Justice Department group works in four major areas, primarily through grand jury action.

Two of the juries are in New York and one each in Los Angeles and Chicago. The special assistants to the Attorney General that serve them confer almost daily and swap information and evidence at every opportunity. The juries are a useful tool because they can combat in some measure, through the use of immunity statutes and contempt actions, the criminal code of silence.

Unified Effort

The second area of action was described by United States Attorney General William P. Rogers as "unified prosecutive effort." It means simply that every law agency will be urged to use its forces and jurisdiction to proceed against racket-controlled "businesses."

The next area of action follows from unified prosecutions. There are suggestions within the Justice Department that some form of "criminal intelligence" office be set up permanently to provide information on rackets to law enforcement agencies. The idea is to have a small force that would be able to direct authorities of one part of the country to other officials who may have information on problems that face them both.

The final area is one in which Mr. Wessel's special group is not directly concerned. Those who have observed criminal syndicates over a long period report that they have largely left the field of crimes against persons and property (murder, rape, arson, robbery, assault) for the more lucrative fields of commerce—such as trucking rackets or dominance of the juke-box industry.

Recently, the anti-trust division of the Justice Department announced that it is going to expand its activities to proceed not only against the industrial giants of the nation but also against the racket-ridden industries where syndicate control is really in restraint of trade.

[New York Journal-American, February 16, 1959]
(Genovese Exhibit T*)

CALLED BIGGEST RING IN U.S.

Hunt Mafia Link in Dope Raid

Federal narcotic agents were probing a Mafia link today after smashing what they termed the biggest narcotics ring in the United States.

In a series of raids which began at 8 p.m. Thursday and lasted until 5 a.m. yesterday, thirty-two suspects were seized and a near-record haul of $3,660,800 worth of heroin was confiscated.

Investigators were checking reports that Vito Genovese, "King of the Rackets," was the mastermind behind the whole operation.

Standing Trial

Genovese, 61, is currently on trial in Federal District Court on another dope charge along with 16 other defendants. They are accused of operating a multimillion dollar drug importing syndicate.

Two of those arrested, Philip Orlandino, 34, and his wife, Ann, 32, were held in $100,000 bail each when arraigned in Queens Felony Court.

The bulk of the heroin, which amounted to 30 pounds all told, was confiscated at the Orlandinos' home at 222-18 93rd ave., Queens Village. Also was $49,113 in cash—$15,000 of it in $1,000 bills.

Twenty-five others were scheduled for arraignment today in Federal Court, and five are already behind bars.

To crack the ring, according to G. H. Gaffney, district supervisor of the Federal Bureau of Narcotics, agents spent 25 months underground, posing as aspiring hoods.

So dangerous was the assignment that on several occasions the undercover agents were oold by the dope dealers:

"We know you're okay. But if you ever turn out to be a cop, you're dead."

* Photographs omitted in printing.

Authorities emphasized that those arrested were not "street pushers" of narcotics but "high-level businessmen" who arraigned the importation and distribution of dope.

Called Top Man

Orlandino's brother, Marc Antonio Orlandino, 53, was taken into custody at his home at 2 Ferndale dr., Hicksville, L. I. He was described as the top man of the ring.

One of the most unhappy prisoners was Joseph "Jo Jo" Manfreidi of 140 James st., Lodi, N. J.

He got married Saturday and was packing for his honeymoon when Federal agents grabbe him.

Gaffney said the Orlandino were suspected of processing th heroin, which was peddled to large extent in East Harlem an Manhattan

In Queens Felony Court, Ma istrate Bernard Dubin praise the arresting officers, saying:

"If these charges are true, thi will rank as the greatest arre of its kind ever made in th country."

Mrs. Orlandino's brother, Wi liam Spinola, 35, of the Queen Village address, was also a rested on charge of interferin with police officers.

[New York Post, February 20, 1959]
(Genovese Exhibit V-3)

Don Vito Genovese, a Face in the Crowd

By Gene Smith

Vito Genovese, an emperor in his own world, today rounds out a six-week time of troubles in another world, one he never made.

"I'm innocent," he makes known as he strolls in the corridor outside Federal Judge Bicks' courtroom. "It could make me sick, these lies."

When Don Vitone—Master Vito, Big Vito—is not musing in the corridor, he is in Room 110 of the Federal Building. There, with 16 others, he stands trial on charges of narcotics conspiracy.

All the defendants, including one woman, sit in a long row sweeping along two walls of the big courtroom. In front of them sit their lawyers, almost as numerous as the very stars in the skies. Three of these attorneys serve to assure Don Vitone full justice.

On the witness stand for the past four weeks has been one Nelson Silver Cantalupes, 34, here on a visit from his residence in a cell at the Auburn Penitentiary. An admitted drug peddler, he is currently in what he calls a "cooperative period" vis-a-vis the law, as opposed to a "partial-cooperative" and "non-cooperative" attitude at other moments.

In this full flowering of his cooperative period, he names names and places and amounts and dates. And what he says is that this one gave him money to deliver the drugs and to this one he delivered the drugs.

And among the ones is Don Vitone, known in his own circles (but not in Room 110) as The Great One.

Although the cross-examination of Cantalupes by one defense lawyer after another—so far, 10 have had at him—is boring, all the defendants listen to every word.

"But you could turn green inside listening to such lies," defendant Vincent L. (Chin) Gigante confides. Chin, a former heavyweight fighter, is no stranger to courtrooms where interior-coloring lies are voiced. Were not fabulous untruths told about him in the court where he was freed of the charge of creasing the skull of Frank Costello with a bullet?

As one lawyer after another in Room 110 probes the memory of

Cantalupes, Don Vitone, always dressed in a double-breasted suit ("I like them, that's why") and sleeveless sweater, seems as one with the others. His concentration on developments is as intense; his risk the same; his classification as defendant identical.

But he is different.

While they for the most part are great hefty fellows, thick-necked and heavy-jowled, he is small and slim.

And while they are congenial chaps, clubfellow-like in this crisis, filled with laughter and jest, he, like Kipling's cat, walks alone.

And he does not speak.

"He don't know any of them," explains Chin, who is described by former U. S. Attorney Paul Williams as "Vito's boy" and a "rising star in the underworld."

"I only seen one of these people before in my life," Don Vitone contributes. "The only one I seen is Gigante. I seen him around Greenwich Village. The others I never seen."

And of course there is a final difference, greatest of all.

They are tough guys, perhaps, ex-cons even—but basically spear-carriers, corporals and sergeants—small fry. He is The Great One, King of the Rackets. He is Don Vitone.

This common fate, this participation in the exploring of Cantalupes' soul, mind and veracity, is carried on under the sponsorship of Judge Bicks, a cherubic-looking gentleman who smiles tenderly when he addresses the predominantly feminine jury.

Often, he asks after the comfort of the seven women and five men.

"Is that chair of yours all right, Number Seven?" he asks. "No? We'll get it changed during recess. Clerk, you remember that."

The jurors stir and smile when the judge asks about the seating arrangements. It lends something to their rather bleak days. When the judge is occupied in duties other than discussing the chair situation, they look bored.

Don Vitone does not look bored. His dark face is always alert, his eyes, hazy behind his dark glasses, unblinking.

But it's not surprising, this contrast between judges and judged. The jurors know little about what's going on, about pushers and payoffs, fixes and cops—while Don Vitone knows many things.

[New York World Telegram, February 27, 1959]
(Genovese Exhibit I)

Report Mob Had Ax Honed for Zwillman

Believed Longie Was Slipping

By Drew Phillips

World-Telegram Staff Writer

Rackets czar Abner (Longie) Zwillman hanged himself in his plush New Jersey home because he knew he was under a death sentence from the mob.

This was the opinion today of both investigators and sources close to the underworld.

These sources agreed that Zwillman had "lost his power and his touch" as a rackets boss and the shadowy big shots in organized crime had slated him for the same treatment they ordered for Albert Anastasia, Willie Moretti and Frank Costello.

Anastasia, onetime chief executioner for Murder, Inc., was shot to death in a midtown barber shop in October, 1957, after he lost his grip as a top mobster. Moretti, a kingpin in New Jersey crime, was gunned down in a Cliffside Park lunch room in 1951, reportedly because he talked too much to federal and state investigators.

Costello got off easier. He was nicked on the ear by a bullet as he entered his apartment house at 115 Central Park West one night in May, 1957. Harassed by federal and local authorities, Costello had become a liability to the mob, according to one theory.

Out of Shadows

Zwillman, whose biggest asset was his ability to keep out of the spotlight, has been pulled out of the shadows recently and his power weakened in proportion, the underworld sources said.

He beat an income tax rap in 1956 when a jury failed to reach a verdict. But last week, the FBI announced the arrest of several men for bribing members of the jury in the tax evasion case. Zwillman's top lieutenant, Jerry Catena, has been under investigation by the Senate rackets committee.

Zwillman himself was soon to be called before the same com-

mittee. And the Wessel Committee, a body of lawyers appointed by Attorney General Williams P. Rogers to investigate the nationwide organized crime setup, reportedly has been looking into every facet of Zwillman's operations.

Power Slipping

Investigators point to the fact that Zwillman was unable to keep Catena and another of his lieutenants, Pete LaPlaca—one of the men arrested for jury fixing—out of trouble as proof that he no longer had the power to protect his men.

Aware that he was slipping, and mindful of the mob's penalty for slipping, Zwillman knew he didn't have much longer to live, according to the investigators and underworld sources. That knowledge, coupled with his ill health and his failure to achieve respectability despite 15 years of philanthropic works, led him to take his own life.

The underworld sources figure Catena, who started out a chauffeur and worked his way up in a sort of underworld Horatio Alger story, is the most likely man to take over Zwillman's enterprises—provided he can win the approval of Vito Genovese, who is reputedly the top man in organized crime today.

Vast Empire

If he does get the nod, Catena will reportedly take over a vast network of enterprises, including night clubs, steel companies, construction companies, labor organizations and New Jersey's biggest vending machine firm. Zwillman also allegedly controlled those union insurance welfare funds in the East that have been taken over by the underworld.

Investigators say the new boss will have his hands full because all of Zwillman's enterprises were run with no written records and with no formal contracts.

Zwillman, 54, was found hanging in the basement of his 20-room, $125,000 mansion in West Orange yesterday morning, an electrical cord looped around his neck.

[New York World-Telegram, March 6, 1959]
(Genovese Exhibit K)

Rockefeller's Drive Spurs Mob Exodus

By Joseph Alvarez
World-Telegram Staff Writer

Gov. Nelson A. Rockefeller's promised hotter war against racketeers is speeding up the exodus of mobsters already triggered by the State Commission of Investigation's activities.

At least 30 top-echelon hoods, including a dozen from the city, have skipped these precincts in recent weeks rather than face a commission quiz.

The World-Telegram disclosed yesterday that Gov. Rockefeller plans to ask the Legislature for a $1.25 million increase in the state police budget and $600,000 for the Temporary State Commission of Investigation.

Arrest warrants are out for two of the missing men—Joseph (Joe Palisades) Rosato and Joseph Falcone. Like most of the other hiding hoods, Rosato and Falcone were delegates to the 1957 gangland convention at Apalachin, N. Y.

Rosato was ordered jailed last January for refusing to answer the commission's questions about the Apalachin gathering. But the 54-year-old gangster was gone when detectives called at his home, 34-31 81st St., Jackson Heights. His car was still in the garage. Rosato is a brother-in-law of underworld kingpin Thomas (Three Finger Brown) Luchese.

Falcone, Utica vice and gambling czar, skipped the state last September after he was ordered to appear before the commission.

Other Apalachin delegates on the missing list include:

Vincent Rao, 59, Yonkers racketeer, Harlem political power and old pal of crime kings Frank Costello and the deported Charles (Lucky) Luciano.

Joseph (Joe Bananas) Bonanno, 52, of 1726 DeKalk Ave., Bklyn., another longtime Luciana lieutenant whose varied business enterprises include laundries, cheese and, police believe, narcotics.

John Bonventre, 54 of 115 Cleveland St., Bklyn., a self-styled "labor relations consultant."

The elder statesmen of crime are faced with problems that call for another board of directors' meeting. But law enforcement agencies throughout the nation have been watching gangland activities ever since the Apalachin conference and communications between mob bosses have been seriously hindered.

Among other things, the gang chiefs want to split up the rackets empire of the late Abner (Longie) Zwillman, who hanged himself in his New Jersey mansion last week, and to find replacements for Frank Costello, now in prison and facing deportation, and possibly for Vito Genovese, millionaire mob monarch who is on federal trial for narcotics operations.

[New York Journal-American, March 7, 1959]
(Genovese Exhibit J)

——WAR ON UNDERGROUND SHOWS RESULTS——

Many Top Hoodlums Bagged in U.S. Crime Hunt

Washington, March 7 (AP).—Several of the nation's top hoodlums have run into black days since the Justice Department started a big push against the underworld a year ago.

More are expected to topple as Federal authorities continue a steady whittling out of cases against underworld characters.

Justice Dept. officials said today Atty. Gen. William F. Rogers' program for an unrelenting long-term attack on the hoodlum element is moving along just about as planned.

Rogers announced the program a year ago as a systematic "nonsensational" drive to combat organized crime with a highly organized series of prosecutions aimed primarily at getting "the 100 Top Hoodlums" behind bars or out of the country.

Names on the select list never have been published, but as a starter the Attorney General ordered a pooling of information on these characters from the files of the FBI, the Immigration Service, and the Treasury units handling counterfeiting, narcotics, alcohol and income tax cases.

The Council of State Governments and the National Assn. of State Attorneys General pledged cooperation.

Milton Wessel, 35, former assistant U. S. attorney in New York City, was recalled from private law practice to act as an information coordinator with the title of Special Assistant to the Attorney General.

In recognition of the fact that the underworld many years ago divided the country roughly into four operating areas—Northeast, Midwest, Far West and Southeast—Wessel and his staff set up field offices at New York, Chicago, Los Angeles and Miami.

One of its tasks was to check out the activities of some 60 men who showed up for a so-called "crime convention" at Apalachin, N. Y., on Nov. 14, 1957.

In the year since the Wessel task force started its highly secret work—and in cooperation with local and State officials—

Vito Genovese, described as top man in the New York underworld—and who attended the Apalachin meeting, was indicted

on a narcotics charge and is now on trial in New York.

Russell Bufalino of New York, another Apalachin delegate, has been ordered deported and deportation proceedings have been started against some others who went to Apalachin.

Joe Profaci, also a delegate, and who has been identified with Brooklyn rackets, has been denaturalized—usually a preliminary step toward deportation action.

Gambler Frank Costello, already in prison for income tax evasion, has had his acquired American citizenship revoked.

Paul "The Waiter" Ricca (known also as Paul De Lucia), one-time right hand man for Al Capone, was convicted of income tax evasion in Chicago and received a three-year prison sentence.

Peter Licavoli, reputed leader of the Detroit Purple Gang, was also convicted on the same charge and got two and a half years.

A Federal Grand Jury at Scranton, Pa. this week indicted Dominic J. Alaimo, official of a United Mine Workers local there, on charges of collecting more than $30,000 over a five-year period from the Knox Coal Co.—allegedly the price of maintaining labor peace at the Knox Mines under a "sweetheart" contract. Alaimo was an Apalachin delegate.

Last week, Abner, "Longie" Zwillman, linked with nationwide racketeering for years, hanged himself in his home at West Orange, N. J. after the FBI arrested six persons in connection with an alleged jury "fix" in Zwillman's 1956 income tax evasion trial.

In the current push on the rackets, the Justice Dept. is also invoking the antitrust laws to catch labor racketeers and hoodlums who have established respectable businesses as a front for something else.

The government believes that "restraints of trade" can be proven in many such cases. It was learned this week that some 10 federal grand juries in all parts of the country are to be used in these investigations. Such juries are already impaneled at New York, Chicago and Omaha.

Officials note that Al Capone was tripped up by the income tax laws 30 years ago. They say the antitrust statutes may very well serve a similar purpose in the underworld now.

Criminal antitrust violations are punishable by six months in prison and $50,000 fines for each offense.

[New York Herald Tribune, March 22, 1959]
(Genovese Exhibit L*)

Boss of U.S. Racket Drive Resigns, But It Won't Quit

Washington, Mar. 21 (UPI).—The Justice Department will not declare an armistice in its war against major crime leaders even though its battle-tested commander is leaving, officials said today.

Malcolm Anderson, who directed the opening stages of the campaign against the nation's 100 top racketeers, is quitting as Assistant Attorney General to return to private law practice by April 1.

Its Targets Are Secret

Department officials said the first skirmishes with gangland overlords have resulted in a series of indictments, several convictions and new deportation proceedings.

The list of crime chiefs the department is gunning for has never been made public. But those who attended the notorious "crime convention" at Apalachin, N. Y., in November, 1957, are considered high on it.

The aim is to put the rackets bosses behind bars on Federal charges—such as income-tax evasion and narcotics peddling—or to give them a one-way ticket out of the country by deportation proceedings.

Last week, the ailing Apalachin host of the gangland conclave, Joseph Barbara sr., was indicted on income-tax evasion charges. Similarly, Dominic D'Agostino, of Niagara Falls, N. Y., who attended the underworld gathering, was indicted on the same charges earlier this month.

Broad Range of Charges

Another guest, Dominic J. Alaimo, an official of the United Mine Workers, was charged with taking kickbacks from the Knox Coal Co., of Scranton, Pa.

Vito Genovese, an underworld bigwig sometimes described as chief of the Mafia in the United States, was indicted on narcotics charges and is now on trial in New York.

* Photograph of Malcolm Anderson omitted in printing.

Russell Bufalino, of New York, another Apalachin delegate, has been ordered deported. Deportation proceedings are underway against Joe Profaci, a delegate linked to Brooklyn rackets.

"Non-Sensational"

Mr. Anderson's aids also claim credit for revocation of gambler Frank Costello's American citizenship and conviction of Paul (the Waiter) Ricca, onetime right-hand man for Al Capone, for income-tax evasion Ricca has been ordered to leave the country.

Peter Licavoli, head of the notorious Purple Gang in Detroit, also was convicted of cheating on his taxes.

When the long-range campaign was announced, Attorney General William P. Rogers said it would be non-sensational and aimed at infiltration of racketeers into legitimate businesses.

Department officials said the crime syndicates have burrowed into trucking, garment manufacturing, exporting and importing, restaurants, construction, insurance of real estate and other legitimate businesses.

[New York Post, March 31, 1959]
(Genovese Exhibit N*)

Drug Raid on Bronx Hideout Nets Top Mobsters on Lam for Months

By Ernest Tidyman

Two top racket figures—one of them said to have inherited the narcotics empire of Charles (Lucky) Luciano—were back in the hands of the law today after months on the lam as fugitives.

They were found living quietly by themselves in separate, swank suites of a new Bronx apartment house, receiving regular visits from a stream of narcotics suspects.

They are:

John (Big John) Ormento, 45, a delegate to the Apalachin crime convention who was indicted with racketeer Vito Genovese last July 8 in what the government called a crackdown on the nation's top drug ring.

Nick Tollentino, 50, indicted as a fugitive after a raid in January 1958 on a narcotics "warehouse" in an Elmont, L. I., home where agents found 20 pounds of heroin and three cans of opium.

When three city detectives from the Bathgate Detective Squad closed in on the apartment house at 1466 Gun Hill Rd. with five federal narcotics agents they found Ormento knocking on the door of Tollentino's flat.

Prisoners Wont' Talk

Ormento, a burly, dark-haired hood with a record of three narcotics convictions and one for conspiracy, had been living on the third floor of the building.

The agents said Ormento was using the name "T. Melone," while Tollentino had identified himself as one "J. Giampe."

They were taken to the Federal Narcotics Bureau at 90 Church St. where they "refused to answer pertinent questions," according to George H. Gaffney, district supervisor of the bureau.

They were later transferred to the Federal House of Detention, 11th and West Sts., before arraignment later today at the Federal Courthouse, Foley Sq.

* Photograph omitted in printing.

Watched 3 Weeks

Gaffney said that a stakeout crew had watched the apartment building for three weeks before moving in and that several known narcotics racket figures visited the building during that time.

The detectives said they were led to the two men through the criss-crossing channels of the narcotic traffic.

At one time they touched on the fatal mugging earlier this month of John E. Jackson, 70, a dope-ring chemist who was attacked in the elevator of his apartment at 1780 Eastburn Av., The Bronx.

He had testified against three narcotics racketeers in Hackensack, N. J., in 1957 and was to testify against a fourth, Frank Borelli of Lodi, N. J., now awaiting extradition from Chicago.

During the search for Borelli, pictures of his associates were sent to various police stations to assist in the search.

Cop Recognized Photo

One of the pictures was of Tollentino. It was recognized by Bronx Detective Thomas Martino as that of a man he had been introduced to in October, but not under the name Tollentino.

Detective Martino was among the raiders who closed in on the fugitive last night and found the other underworld boss knocking on his door.

Ormento had vanished before his indictment on charges of being tied to Genovese's drug ring. It was shortly after he appeared before legislative rackets investigators and refused to answer questions about the Apalachin mob gathering.

Another Mobster Missing

Last night's arrests came amid speculation over the similar disappearance of another delegate to the Apalachin meeting, mobster Vincent Rao.

He dropped out of sight about a year ago, soon after he was questioned by the federal rackets grand jury here and several law enforcement agencies want to continue questioning him.

The theory that he may have been silenced permanently by racket associates was similar to the one that circulated regularly about Ormento—until his capture.

[New York Journal-American, April 1, 1959]
(Genovese Exhibit O)

Ormento Facing Court; Vito's Case Ending

"Big John" Ormento goes before one Federal judge today while his bosom pal, Vito Genovese, listens in another courtroom to the windup of his long-run trial as top narcotics smuggling chief.

Genovese and Ormento were leading delegates to the raided Mafia convention in upstate Apalachin in 1957. Genovese is the reputed head of the dread Black Hand society in America.

Ormento was indicted along with Genovese and 35 others for conspiracy to smuggle and distribute narcotics.

He had been a fugitive since the indictment last June. A sharp-eyed detective, Thomas Martino, of the Bathgate ave. Precinct, spotted a picture of Nick Tolentino, a friend of both Genovese and Ormento, as a man he had met at a Bronx party.

Police and Federal agents trailed Tolentino to an apartment house at 1466 Gun Hill rd., Bronx. They arrested Ormento and Tolentino and brought them before Federal Judge Edmund L. Palmieri.

He held Ormento in $150,000 and Tolentino, who had skipped bail in a narcotics case, in $100,000.

The Government closes its case today against Genovese with a summation by Christy. The trial has had a longer run than some Broadway plays, having opened Jan. 5.

APPENDIX D

Information Recently Furnished to the Government Concerning Unreliability and Perjuriousness of Cantellops' Trial Testimony

VOLPE, BOSKEY AND SKALLERUP
1701 K Street, Northwest
Washington 6, D. C.

March 23, 1960

Honorable J. Lee Rankin
The Solicitor General
United States Department of Justice
Washington 25, D. C.

Re: *No. —, Vito Genovese, Petitioner, v. United States*

Dear Mr. Rankin:

I am writing with respect to the case of No. —, *Vito Genovese, Petitioner* v. *United States*. It will be recalled that on February 18, 1960, having then recently entered the case as attorney for petitioner, I made application for extension of time within which to file a petition for certiorari, and that by order of Mr. Justice Harlan an extension of time was granted to and including March 26, 1960. A petition for certiorari has been in preparation, and will be filed on or before March 26th.

There is furnished herewith to you a considerable number of items bearing most directly and significantly on the testimony which was given at this trial by Nelson Silva Cantellops. As the Court of Appeals observed, Cantellops was "the principal government witness" in the case; he testified "for five days on direct examination and for fourteen days on cross-examination", and his testimony "covers about 2,000 pages of the stenographic minutes". Through Cantellops the prosecution sought to prove at the trial the existence of a single large-scale conspiracy to import, distribute, purchase and sell narcotics in violation of law. Moreover, it was Cantellops, and Cantellops alone, whose testimony at the trial provided the sole and uncorroborated supposed proof to connect petitioner Genovese with this alleged narcotics conspiracy; as the trial judge stated in charging the jury, "The witness Cantellops gave

the only testimony concerning the defendant Vito Genovese" (Tr. 7129; App. 1101a).

From the items furnished with this letter, it will appear that (1) subsequent to the decision by the Court of Appeals Cantellops has made a major recantation of the testimony he gave at this trial, including recantation of testimony as to specific incidents which concern petitioner Genovese, and (2) independent new evidence has also been discovered in refutation of important segments of Cantellops' testimony at the trial. These items, and their relationship to the testimony given by Cantellops at the trial, are summarized below. It is hoped that these items will be helpful to you in considering the position which it is appropriate for the Government to take with respect to the case in the Supreme Court, particularly in the light of the principles expressed in *Mesarosh* v. *United States*, 352 U.S. 1. See also *Kretske* v. *United States*, 350 U.S. 807.

I. Cantellops' Recantation

Enclosure 1 hereto is an affidavit by Wilfred L. Davis, Esq., dated March 22, 1960, which describes a meeting that took place at the Mount Carmel Roman Catholic Church, The Bronx, New York, on January 27, 1960. Mr. Davis has been one of the attorneys for petitioner Genovese throughout this case. From Mr. Davis' affidavit it appears that, at the meeting described, there were present Mr. Davis and two other attorneys (Herbert S. Siegal, Esq., and Amedeo L. Lauritano, Esq.), a priest, the witness Nelson Silva Cantellops, and (during part of the meeting) a notary public. As likewise is indicated by Mr. Davis' affidavit, Enclosure 2 hereto is a tape copy of a copy of a recording of this meeting which took place at the Mount Carmel Church on January 27, 1960; and attached to Mr. Davis' affidavit (Enclosure 1) is a transcript which, as he states in the affidavit, he has caused to be prepared of those portions of the tape which he finds sufficiently audible. The original of the recording, as we understand it,

has been in the possession of the United States Attorney's Office in New York City since about February 4, 1960.

From the foregoing items it appears that Cantellops came to the meeting at the Church and read a Statement aloud twice—the second time after the arrival of the notary public (whom the priest had called in)—and Cantellops declared the truthfulness of the Statement and executed it before the notary public. In addition, Cantellops answered certain other questions which were asked of him concerning important portions of the testimony he had given at the trial of this case.

According to Enclosures 1 and 2, Cantellops, in the recantation he made at the Church, said that he had never met John Ormento or Carmine Galante; that Cantellops' past testimony was false and untruthful, and was suggested by agents of the Narcotics Squad (one of whom Cantellops identified by name) and by an Assistant United States Attorney at that time (whom Cantellops, when questioned, declined to identify by name).

John Ormento and Carmine Galante are two of the defendants who, though named as defendants in the indictment, were severed on motion of the Government (App. 14a-15a) and have not as yet come to trial. However, they both figured extensively in the testimony which Cantellops gave at the trial of petitioner Genovese and others, which is now being brought before the Supreme Court for review. For example, by examining pages 57 through 74 of the Brief which the Government filed in this case in the Court of Appeals, one can very quickly see the considerable extent and importance of Cantellops' testimony at this trial concerning his alleged meetings and conversations with Ormento and Galante. For a fuller review, the stenographic transcript of the trial should be examined. It seems evident that if Cantellops never met Ormento and Galante—which is what his recantation Statement of January 27, 1960, declares to be the fact—then the testimony which Cantellops gave at the trial of this case was false

and perjured in fundamental and far-reaching respects and the convictions in this case, for this reason alone and apart from all others, cannot be allowed to stand.

Moreover, if Cantellops never met Ormento and Galante, then at least two of the principal items in Cantellops' trial testimony which concern petitioner Genovese were clearly false and perjured testimony. In fact, as appears from the record, in Cantellops' trial testimony there was only one occasion on which Cantellops claimed to have met and spoken to Genovese, and this was an occasion when, according to Cantellops' trial testimony, he had been taken and introduced to Genovese by Ormento (see item (b) immediately below). The two items referred to are the following:

(a) At the trial Cantellops testified that at the beginning of August 1956, Ormento, Rocco, "the Mexican", Evola and Cantellops went in a car and drove to a restaurant and bar on East 86th St., where Ormento went to a table at which Genovese was sitting, and after talking to Genovese, Ormento came back and said to Cantellops "Let's go, the right man wants to take a look at you to see if you are all right", whereupon they left and went off to meet "the Mexican" and the defendant Santora (Tr. 1224-1228, 2862; App. 301a-303a, 761a).

(b) At the trial Cantellops testified that within the last few days of August or early September 1956 Cantellops was picked up at his home by Ormento, Evola, Pappadio and Galante, who drove to a German restaurant in East 86th Street; Ormento went in to make a phone call, and came back in a few minutes saying "We can go, they are behind us"; they got back into the car and went to the west river drive, parking there; another car came up behind, and Ormento and Cantellops moved to the second car, which Genovese was in and Gigante was driving; Ormento said, "Vito, this is Nelson; Nelson, this is my good friend" and Ormento told Genovese, "This man is doing a good job for us"; Ormento then said to Cantellops:

"This is the right man. Explain to him your invention. He may help you out"; Cantellops explained his invention; Genovese said "we were going to a meeting where territorial control was to be discussed and these people were counting on me [Cantellops] to help them out, that I could earn my money . . . over there and make the first sample of this invention and . . . they will take care of the rest"; that the two cars drove to a house on Seymour Avenue in the Bronx, and everyone went in except Genovese and Gigante; that Mazzie and other people were inside; that discussion of matters relating to narcotics distribution took place inside; that at the end of the meeting Genovese came in and asked what was the decision, what they had in mind, and "Everybody spoke his part and the time and details", and Genovese said "he wanted to know because he wanted to know when to send his men in"; that Genovese and Gigante then drove away in their own car; and Cantellops went back with Ormento, Evola, Pappadio and Galante, discussing with them the role Cantellops was to play in the narcotics distribution (Tr. 1291-1317, 2862-2864, 3081-3099; App. 336a-352a, 761a-762a).

If Cantellops never met Ormento—which is what his recantation Statement of January 27, 1960, declares to be the fact—then the foregoing testimony was clearly false and perjured in fundamental and far-reaching respects.

From Enclosures 1 and 2 it further appears that at the meeting at the Mount Carmel Church on January 27, 1960, Cantellops also answered various questions which were put to him, though not all of them, and that his answers likewise repudiated important testimony he had given at the trial. Thus it appears from Enclosures 1 and 2 that, in response to questions, Cantellops expressly repudiated the testimony he had given at the trial concerning portions of item (b) above, and expressly repudiated testimony he had given extensively at the trial concerning what he had testified was a trip he made to Puerto Rico on behalf of the alleged narcotics conspiracy.

II. Independent Evidence in Refutation of Important Segments of Cantellops' Testimony at the Trial

The independent evidence which has now come to light relates largely to Cantellops' trial testimony concerning the Las Vegas matter, and some of it may also have a definite bearing on Cantellops' trial testimony concerning the Puerto Rico matter.

In the trial of this case the Las Vegas matter was an event of great importance, and Cantellops' trial testimony concerning it, on both direct and cross-examination, occupies many pages in the stenographic minutes. These are summarized below, so that it will be possible to see readily how far-reaching is the refutation which now is known to exist. It will also be noted from the items furnished that at least some of this evidence refuting Cantellops' trial testimony now appears to have been known at the time of the trial to some representatives of the Government as a result of investigations which the Bureau of Narcotics conducted prior to trial—a matter as to which more will be said later.

There were two main reasons why the Las Vegas matter occupied such prominence at the trial. The first was that, according to Cantellops' trial testimony, his March 1955 trip to Las Vegas, and the events immediately preceding it, marked his own entrance into the alleged narcotics conspiracy and led to the various other activities which, according to his trial testimony, he carried on subsequently on behalf of the alleged conspiracy. The second reason for the importance of the Las Vegas matter at the trial was that this was the one trip for which there existed solid documentary evidence that Cantellops at least had actually been physically in the city he claimed to have gone to, here Las Vegas, at the time when he claimed to have been there on behalf of the alleged narcotics conspiracy. At the trial Cantellops testified to various other subsequent trips he claimed to have made from New York on behalf of the

alleged narcotics conspiracy—for example, trips to Miami, Chicago, Cleveland, Philadelphia, Puerto Rico; these were not supported by either documentary evidence or any other witness' testimonial evidence that Cantellops had even been in those places at the time he said.

But the Las Vegas matter was different, and was used by the prosecution in an effort to establish plausibility for the whole trial testimony of Cantellops. As to Las Vegas, the prosecution had a copy of Cantellops' employment record at the Golden Nugget in Las Vegas; this was used during Cantellops' direct examination to establish that Cantellops had worked there, beginning March 24, 1955, for four or five days (Government Exhibit 53; Tr. 1015-1018; App. 191a-192a). Then toward the close of its case, after Cantellops' testimony had been completed, the Government called as a witness Charles C. King, chief auditor of the Golden Nugget, who testified from records which were introduced in evidence that the Golden Nugget's records showed Cantellops had been employed there as a shill, at $7 per day, for the four days commencing March 24, 1955 and terminating March 27, 1955 (Government Exhibits 101 and 102; Tr. 5050-5055). The prosecutor stressed this evidence considerably in his summation to the jury (Tr. 6756, 6780-6781).

It is in the light of these factors that the Las Vegas matter became so important in the trial of this case. Considerable time was spent in cross-examination of Cantellops, seeking to get at the real facts as to the circumstances under which Cantellops had gone to Las Vegas, the length of time he was there and what he did while he was there, the location of the rooming house where he stayed, his financial situation at the time, and the circumstances under which he left Las Vegas and returned to New York. It now would appear, according to the information in the items being furnished herewith, that the testimony which Cantellops gave at the trial concerning these matters was filled with falsehoods.

On direct examination at the trial, Cantellops testified as follows with respect to the Las Vegas matter (Tr. 962-1032; App. 170a-200a):

When he was released from the New Jersey prison in January 1955, Cantellops had a gambling invention in mind and was looking for financial backing. He looked around for six or seven weeks. Around the last day of February or the beginning of March 1955, he met the defendant Barcellona and explained his invention; Barcellona told him to come back the next day, which he did, and he then met also the defendant Carmine Polizzano, and he explained his invention. Then the next day he again met Barcellona, who took him to meet the defendant Ralph Polizzano; they were joined by Carmine Polizzano and the defendant Joseph Di Palermo. He explained his invention, and was asked whether he had ever been arrested for narcotics. Di Palermo told him the invention was good but he (Di Palermo) had to see somebody else. A couple of days later Cantellops went to see Barcellona again; Di Palermo and Carmine Polizzano were there; he was told they had to send his invention to somebody else, and to keep in touch with Barcellona. A day or two later he saw Barcellona and asked Barcellona for a $500 loan, which Barcellona made to him. Four or five days later he saw Barcellona again; Barcellona told him [redacted] come around within a day or two. He used to see Barcellona every day in the gambling places, and a few days later he went to Barcellona's place. Barcellona said Cantellops should repay the money by doing a favor for him—to go to Los Angeles and from there to someplace else, to deliver some "junk" (narcotics); Cantellops would get paid $1,000, minus $600 to be discounted on account of his debt to Barcellona. Cantellops accepted. A conversation took place between Cantellops, Barcellona, Carmine Polizzano, Ralph Polizzano and Di Palermo, concerning methods of carrying narcotics and how Cantellops would have a good future in the narcotics business. Cantellops was told he had to go

to Los Angeles by plane, from Los Angeles to Reno by plane shuttle, and from Reno to Las Vegas by bus; and that Barcellona would give him further instructions. The next day Barcellona gave Cantellops money to buy a ticket to Los Angeles, which Cantellops did; that evening Barcellona met Cantellops at the air terminal and gave him the instructions of the whole trip to Las Vegas. Barcellona told Cantellops that on reaching Las Vegas he should go to the Golden Nugget, one of the biggest gambling places there, and try to locate Carmine Polizzano; in case the latter did not show up, then Cantellops should take a place in one of the cheapest places in the neighborhood and wait until Carmine Polizzano showed up. If he found nobody at the Golden Nugget, then Cantellops was to go to the Saratoga Racing offices and ask where he could play some kind of baseball bingo. When he delivered the package to the person he had to deliver it to, he was to tell him "Happy birthday". Before the bus left from the airline terminal in New York, a young fellow came and handed Cantellops a big box, about 12 inches by 10 inches, which was wrapped in the form of a gift. Barcellona gave Cantellops some money; Cantellops went out to the airport and flew that night to Los Angeles, arriving about 7:30 A.M.; from there Cantellops took a plane to Reno, where he stood one day and then proceeded to Las Vegas by bus. In Las Vegas he went to the Golden Nugget for about half an hour trying to locate Carmine Polizzano. He did not see him there; he went to the Saratoga and mentioned his password but saw no reaction so he went back to the Golden Nugget, and from there went around the neighborhood and got a room in one of the cheap houses around there. He went back to the Golden Nugget, staying in the place for awhile, being employed there as a dealer. He went to work at the Golden Nugget on March 24, 1955, and worked there about four or five days. The first day he was working there Carmine Polizzano called him over and introduced him to the defendant, Fiano, tell-

ing him Fiano was the man to whom he was to deliver the narcotics. That evening Cantellops delivered the package to Fiano, and then Cantellops returned to work at the Golden Nugget. Carmine Polizzano then handed him some money. Cantellops worked a few days more at the Golden Nugget, and "shared my expenses coming back with one of those fellows from New York who lost his money and needs gas and expenses to come back". After arriving back in New York Cantellops was paid by Polizzano.

The cross-examination of Cantellops by various defense counsel, relating to this Las Vegas matter, was very extensive and covers about 300 pages of the stenographic minutes of the trial. The subjects covered included the discussions preliminary to the trip, the method by which Cantellops got to Las Vegas, what he did and whom he saw in Las Vegas, the nature of his employment at the Golden Nugget, the timing of the various events he described, the arrangements which he made at the rooming house where he said he stayed in Las Vegas, the location of the rooming house, his financial situation while in Las Vegas, and the person with whom and circumstances under which and route by which he returned to New York. (Tr. 1665-1666, 1694-1697, 1710-1711, 1947-1949, 2110, 2362-2427, 2436-2454, 2716-2723, 2735-2741, 2748-2806, 2814-2818, 3205-3213, 3389, 3456-3463, 3475-3477). With respect to all these matters, Cantellops elaborated considerably over what he had testified to on direct examination. The points in his testimony on cross-examination at the trial which are most pertinent for present purposes may be summarized as follows:

On cross-examination Cantellops testified that the first day he was in Las Vegas he got a room in a small boarding house, about two or three blocks from the Golden Nugget, registering under his own name, Nelson Silva Cantellops. He started paying rent by the day, paying a couple of dollars or $1.50 for the first day, and then paid a week's rent

because there was a cheap weekly rate. He stayed there three or four days; that was the only place he stayed at in Las Vegas; and he moved from the rooming house when he left for New York. (Tr. 2402-2405). He got his job at the Golden Nugget around the next day after he arrived in Las Vegas, working as a shill, not as a dealer. It was the first or second day, or could possibly have been the third day that he was there, when he met someone from New York, namely Carmine Polizzano (Tr. 2407-2409). After Cantellops made the delivery of narcotics to Fiano, he saw Carmine Polizzano later that night, and Carmine Polizzano then gave him some money, around $150. Cantellops stayed in Las Vegas two or three days more, making a total of five days in Las Vegas, more or less, and then came back to New York. Cantellops came back to New York by sharing expenses with a guy who was broke, and the two of them drove together back to New York; Cantellops doesn't know who the man was, it was the first time Cantellops had met the man; the man was one of the thousands of common people that lose their money and then share expenses to come back; Cantellops met him at the Golden Nugget, he was a tall young fellow about 25 or 28 years old, Cantellops had no idea of his nationality; he was light-complexioned and his car was a new 98 Oldsmobile, 1955 or 1954; it was a big car. The two of them left Las Vegas in the afternoon, around 12 or 1 P.M., and drove almost straight through to New York; while one was asleep the other drove; the trip took from three to three and one-half days, driving day and night. Cantellops had some money with him—$100 or $150, plus his pay for four or five days at the Golden Nugget. The other man gave Cantellops his name; Cantellops wrote it down in a notebook, but lost it; the other man never told Cantellops his business and they never discussed the private life of each other; the other man said he was a veteran and Cantellops told him Cantellops was a veteran too. Cantellops also told him that Cantellops had come to try his luck in Las

Vegas like he had. The other man's first name was something like John, something that started with J; as far as Cantellops could make out he lived in New York. The car left Las Vegas from in front of the rooming house where Cantellops had been staying; Cantellops had let the other man stay in Cantellops' room in the rooming house the last night while Cantellops was out, and at 7 or 8 in the morning the two of them started fixing the car to start the trip. Cantellops had known the other man since the afternoon before, having met him in the Golden Nugget. The other man started driving; Cantellops drove about four or five hours later for the first time; then they each took turns driving every three hours back to New York (Tr. 2402-2409, 2418-2427, 2436-2454).

On further cross-examination Cantellops acknowledged that he could have told Agent Consoli, when questioned on February 4, 1958, that he had worked in Las Vegas for about two weeks; but that was a momentary explanation, and after he had had more time to think over the precise time, he had recalled it was only three or four days; the "two weeks" had been a quick fast estimate that was inaccurate (Tr. 2716-2723, 2735-2740).

On further cross-examination Cantellops testified that it "could be" that he was in Las Vegas for more than five or six days and it "could be" he arrived there about March 17, 1955, give or take a day. But he testified he was not there for five days before he got the job at the Golden Nugget on March 24, he thinks he got the job almost immediately when he arrived there (Tr. 2748-2852).

On further cross-examination Cantellops testified that he began employment at the Golden Nugget on March 24; he saw Carmine Polizzano within the first couple of days of employment; it could have been more than the second day, it could not have been more than the third day after he obtained employment—it was within the first or second day; his best recollection was it was the first day. It was

during the latter part of March or beginning of April that he returned from Las Vegas (Tr. 3205-3212).

On further cross-examination Cantellops testified that on returning from Las Vegas to New York he was not broke, he had some money (Tr. 3389); that he got employment in Las Vegas the same day or the next day that he arrived there, more or less that's the truth (Tr. 3456-3457), and that he was in Las Vegas a day or two before he got the job at the Golden Nugget on March 24 and earned $8 per day in his job at the Golden Nugget (Tr. 3461-3462).

In what respects, then, is Cantellops' trial testimony on these matters refuted and contradicted by the information contained in the items being furnished herewith? As will appear, the refutation is very extensive.

Enclosure 3 hereto is a photostatic copy of a Statement dated March 6, 1960, by Glen E. Bodell, licensed investigator residing in Las Vegas, Nevada, in which he describes various investigative steps taken by him, at the request of Wilfred L. Davis, Esq., to locate the rooming house in Las Vegas where Cantellops had stayed in 1955 and to ascertain other circumstances relating to Cantellops' activities during Cantellops' 1955 stay in Las Vegas. The precise location of the rooming house, it should be added, had never been made known during the trial, nor was there any indication given at the trial that the Government might have information as to its exact address. Attached to the original of Mr. Bodell's Statement (which is presently in Mr. Davis' possession) are either photostatic copies or originals of the items referred to below as Enclosures 4 through 10.

Enclosure 4 hereto is a photostatic copy of a handwritten affidavit (for convenience, a typed copy is also enclosed), dated November 11, 1959, by Gertrude Latham, and her husband Lester L. Latham, proprietors of the rooming house at which Cantellops stayed in Las Vegas. According to the information in this affidavit Cantellops was at this rooming house from March 21 through April 4

or 5, 1955—a period of fifteen or sixteen days. The information furnished in this affidavit shows not only that Cantellops was in Las Vegas for a period considerably longer than Cantellops' trial testimony asserted, but also that the circumstances of his being there and of his departure were considerably different from what his trial testimony asserted. The original of this affidavit is presently in Mr. Davis' possession.

Enclosure 5 consists of photostatic copies of Mrs. Latham's records (according to Enclosure 4) relating to five other roomers who were in the same house during all or part of the time Cantellops was there. The originals of these records are presently in Mr. Davis' possession.

Enclosure 6 is a photostatic copy of a notation made (according to Enclosure 4) by Mr. Latham concerning the contents of the rooming house records relating to Nelson Cantellops, the original of the record itself having been made available by request (according to Enclosures 4 and 3) to a Federal Bureau of Narcotics representative, through the Las Vegas Police Department, and having never been returned. The original of the notation which constitutes Enclosure 6 is presently in Mr. Davis' possession.

Enclosure 7 is a photostatic copy of a handwritten note to Mr. and Mrs. Latham which (according to Enclosure 4) was left by a Federal narcotics agent, J. Mulgannon, stating that his New York offices asked that he get the names of the tenants who lived in the house with Cantellops in March 1955, and requesting that they give the names to Mr. Handlon of the local police. The original of this note is presently in Mr. Davis' possession.

Enclosure 8 is a photostatic copy of a Statement by Jose P. Linares, dated December 20, 1959, and notarized December 26, 1959. According to this notarized Statement, the events which preceded Cantellops departure from New York to Las Vegas in March 1955, beginning with the time when Linares first met Cantellops in about January

1955, were of a very different nature from the trial testimony given by Cantellops; the circumstances in which Cantellops was living in Las Vegas, and the circumstances of Cantellops' departure from Las Vegas and return to New York were likewise entirely different from what Cantellops testified to at this trial. The original of this notarized Statement is presently in Mr. Davis' possession.

Enclosure 9 is a photostatic copy of a handwritten note by Mrs. Latham and Mr. Latham, dated March 6, 1960, identifying photographs of the man whom they recognized as being the one who had come to get Cantellops and who had paid Cantellops' room rent. The original of this is presently in Mr. Davis' possession.

Enclosure 10 is a photostatic copy of an affidavit by Mrs. Latham and Mr. Latham, dated March 10, 1960, further referring to the foregoing. The original is presently in Mr. Davis' possession.

Enclosure 11 is an affidavit by Mr. Davis, dated March 22, 1960, relating to the phase of the investigation concerning Linares and identifying the photographs in Enclosure 9 as photographs of Linares.

Enclosures 12 and 13 are photostatic copies of handwritten affidavits (for convenience, typewritten copies are also enclosed) dated, respectively, November 6, 1959, and November 24, 1959, by Dominick Stella, relating further to the Las Vegas matter. The originals are presently in Mr. Davis' possession.

Enclosure 14 is a certified copy of papers on file in the Clerk's office of the Court of Special Session of the City of New York in the case of People v. Nelson S. Cantellops and Joseph Linares. This, together with the information in Enclosures 15 and 16, confirms various portions of Linares' affidavit (Enclosure 8), by showing that on March 6, 1955, a complaint was filed in the New York City Magistrate's Court, Arrest Court, Borough of the Bronx, charging that on March 4, 1955, at about 4:00 p.m., Nelson S. Cantellops and Joseph Linares had committed the crime

of conspiracy, in that they had entered a jewelry store and conspired to defraud the complainant of $600 by an effort to sell a diamond; that Cantellops and Linares were arraigned in Magistrate's Court on March 6, 1955, at which time the case was adjourned to March 18, 1955, and bail was continued; that bail bonds of $500 each for Cantellops and Linares were posted through Continental Casualty Company; that on March 5, 1955, three persons (being the same three persons on each bond) had executed confessions of judgments to the Continental Casualty Company, as security to the latter on the two bail bonds; that when the case was called in the City Magistrate's Court on March 18, 1955, Linares was present but Cantellops was not present; that on April (?) 11, 1955, an information against both Cantellops and Linares, based on this charge, was filed in the Court of Special Sessions, Bronx County, and on April 13, 1955, their attorney filed a notice of appearance in that court, a plea of not guilty was entered, and the case was set for trial on May 6, 1955; and that the court record does not show any final disposition of the case. It should be noted, also, that although Cantellops' extensive record of criminal and other illegal activities was brought out in great detail at this trial, there was no reference whatsoever made to this brush which he had with the law; and this was a matter which, if it had come out at the trial, might have led them—as it does now—to the uncovering of evidence refuting important segments of Cantellops' trial testimony.

Enclosure 15 is a photostatic copy of a transcript which has been obtained from Florence Greenberger, Official Court Reporter, of the proceedings in the City Magistrate's Court on March 6 and March 18, 1955, on the case against Cantellops and Linares referred to in Enclosure 14 above.

Enclosure 16 comprises what appears to be photostatic copies of six confessions of judgment obtained as security for Continental Casualty Company, all dated March 5, 1955, in connection with the Company's executing bail bonds of

$500 each for Cantellops and Linares, in the proceedings referred to in Enclosure 14. From these, it appears that the same three persons gave the security for Cantellops and for Linares.

Enclosure 17 is a photostatic copy of a handwritten (a typewritten copy is also enclosed for convenience) affidavit by Angel Lorenzano, called "Joe" Lorenzano, dated January 7, 1960. The original is presently in Mr. Davis' possession.

Enclosure 18 is a copy of an affidavit by Albert J. Krieger, Esq., dated March 15, 1960, relating to the circumstances under which the affidavits set forth as Enclosures 12, 13 and 17 were executed. The original is presently in Mr. Davis' possession.

Enclosure 19 is a photostatic copy of an affidavit of James Lorenzana dated January 12, 1960. The original is presently in Mr. Davis' possession.

From the information set forth in the foregoing enclosures, it is clear that during the portion of March 1955, which immediately preceded his leaving New York for Las Vegas there were numerous events in Cantellops' life—some of them documented by official records—having an entirely different nature from the activities which he described at the trial; and throughout the entire trial, these activities were neither disclosed nor hinted at. More than that, according to the information in the enclosures, the testimony Cantellops gave at the trial concerning the important Las Vegas matter was fundamentally false in a number of respects. According to the information in the enclosures, Cantellops was in Las Vegas for a period far in excess of the period he repeatedly testified to at the trial. Further, contrary to the testimony he gave at the trial to the effect that he had money when he was in Las Vegas and also when he left Las Vegas and came back to New York, according to the information in the enclosures Cantellops was "broke", and unable even to pay his very modest room rent at the rooming house. Further, Cantellops in

his trial testimony told a very elaborate story about how he had met a complete stranger at the Golden Nugget, with whom he shared expenses on a drive back to New York; and according to the information in the enclosures, that story was fundamentally false, for Cantellops was found at the rooming house in Las Vegas by Linares, whom he knew perfectly well, and Linares (together with Stella) then brought Cantellops back to New York.

From the standpoint of the proper administration of justice, there are other aspects of this matter which should well be cause for concern. It will be noted that, according to the information in Enclosures 3, 4, 6 and 7, it appears that a considerable amount of the information concerning Cantellops' stay in Las Vegas was made available to the Bureau of Narcotics in response to inquiries and requests for documents which the Bureau of Narcotics made as a part of its investigation, apparently before this trial began. This information, as already indicated, clearly stood in refutation of important segments of Cantellops' trial testimony, and would have shattered Cantellops' credibility. If any such information did in fact come into the possession of agents of the Government prior to the trial, then where was it kept during the trial, why was it not disclosed, and if any suppression took place, who was responsible for it? Indeed, so far as we are aware, there has not to this day been any disclosure that any such information came into the possession of Government agents.

Moreover, the transcript shows that during the trial, on February 4, 1959, the trial judge stated that "The United States Government turned over to the Court six large files which were represented to be the complete files of the Bureau of Narcotics . . . the Court has culled out from those reports every statement and every report which deals in any wise with the witness Cantellops. . . ." (Tr. 2018; App. 484a). And again, that same day, the trial judge stated: "I can tell you that I received six or seven files with the representation that those were all the files of the bureau

relating to this case" (Tr. 2044-2045). If the Bureau of Narcotics had obtained information as is indicated by Enclosures 3, 4, 6 and 7 hereto, then, at the time the foregoing representations were made to the Court, where were the files in which any such information was kept?

Any or all of the originals presently in Mr. Davis' possession will be made available to you for inspection at any time you may wish.

As stated at the outset of this letter, it is hoped that the submission of the items contained in the Enclosures hereto will be of help to you in considering what position it is appropriate for the Government to take with respect to the case in the Supreme Court. In the event that you would like to confer with the persons who have obtained the material set forth in the Enclosures, and make any further inquiries of them, I am sure that such a conference can easily be scheduled.

Sincerely yours,

/s/ Bennett Boskey
BENNETT BOSKEY

Enclosures, as stated
Delivered by hand

ENCLOSURE 1

AFFIDAVIT

Wilfred L. Davis, being duly sworn, deposes and says:

1. I am an attorney admitted to practice in the State of New York and am a member of the bar of the Supreme Court of the United States. I have been one of the attorneys for the defendant Vito Genovese in the District Court and in the Court of Appeals and in the Supreme Court of the United States in the pending criminal case, United States v. Aviles, et al. I was present in the courtroom during most of the trial of the case in the District Court, and during that period I saw and heard the testimony of

Nelson Silva Cantellops, the Government's principal witness in the trial.

2. On Wednesday, January 27, 1960, I received a call from Amedeo Lauritano, Esq., the attorney for one of the severed defendants (Andimo Pappadio) in the above-entitled action. He said he wanted to come down to see me. He came to my office and told me that he and Mr. Herbert S. Siegal, who is the attorney for another of the defendants (Salvatore Santora), had an appointment to meet at Mr. Siegal's office, and then to go on to a meeting at some other place where they understood that Mr. Cantellops was going to make a recantation of his testimony during the trial. Mr. Lauritano asked me if I would like to attend. I said that I would.

3. Mr. Lauritano and I went by taxicab to Mr. Siegal's office at 149th Street near Third Avenue in the Bronx, and, after some discussion with Mr. Siegal, Messrs. Lauritano, Siegal and myself left Mr. Siegal's office and took a taxicab to Mt. Carmel Church, a Roman Catholic Church located at about 187th Street and Arthur Avenue in the Bronx, where I was told it was expected that Cantellops was going to appear. After arriving at the Church, Mr. Siegal, Mr. Lauritano and I entered at the Rectory. Mr. Siegal asked if anybody was there looking for him. Mr. Cantellops not having arrived yet, Mr. Lauritano went next door to a candy store to make a telephone call, and I had a malted milk, not having had any lunch. Mr. Siegal remained at the Rectory.

4. When Mr. Lauritano and I came back into the Rectory, I saw a man whom I recognized as Nelson Cantellops. Cantellops looked heavier than he had appeared during the trial. A priest was present and led us into a conference-type room where everyone was introduced. Mr. Lauritano had with him a briefcase containing a portable wire recorder, which he set down in the room. We were all seated and Mr. Cantellops asked for a notary public. Someone

asked the priest if he could get a notary public. The priest said there was a notary public whom he could call, and picked up the telephone and did so. Mr. Cantellops took a statement from his pocket, which he read. He held the piece of paper in his hand as he read this statement. I did not myself see what was written on the paper. In his statement Cantellops stated that he had never met John Ormento or Carmine Galante; that his past testimony was false and untruthful and was suggested by agents of the Narcotics Squad, mentioning a Mr. ————* by name, and an Assistant United States Attorney at that time, whom he did not identify at the meeting in the Church. After reading the statement Cantellops was asked several questions relating to the testimony he had given at the trial. Among these was whether he had ever made a trip to Puerto Rico at the request of John Ormento or Carmine Galante in 1956 or 1957, and he said no. I asked him whether he had ever met John Ormento at a German restaurant on 86th Street, gotten into a car and gone over to the West Side highway and there changed into another car and then driven up to a meeting in the Bronx with John Ormento, and Mr. Cantellops said no. I asked Mr. Cantellops a few more questions on the same subject, and Cantellops indicated that he didn't want to answer them. I also asked him whether he had ever met John Ormento in a German restaurant on 86th Street or an Italian restaurant on 96th Street, and he said no.

5. During the time that Mr. Cantellops was being asked questions the notary whom the priest had called arrived. After being introduced to the notary Mr. Cantellops was asked to read the statement that he wanted notarized. He did this. Again, I did not see what was written on the paper that was to be notarized, but Mr. Cantellops read aloud the same statement that he had read before. The notary asked him whether it was true and Mr. Cantellops

* Name, in original affidavit furnished to Solicitor General, is omitted in printing.

then signed the statement before the notary public. I remember asking the notary to ask Cantellops whether he made this statement of his own free will. The notary asked him that question, and Mr. Cantellops replied affirmatively. After the statement was notarized, I think the notary then started to hand the statement to Mr. Siegal. Mr. Cantellops took the statement from the notary, got up and walked out of the church. The notary refused to accept any payment for his services. Mr. Siegal, Mr. Lauritano and I then went out of the church, and saw that Cantellops was walking across the street. We stood on the corner discussing what should be done with the wire recording.

6. I suggested that we take Mr. Lauritano's wire recording and go right down to Washington with it and present it to Mr. J. Edgar Hoover. There was a general discussion of whether we should do this. Mr. Lauritano and Mr. Siegal did not feel this should be done right then.

7. We took a taxi to Mr. Siegal's office where Mr. Lauritano played his wire recording of the meeting at the church and Mr. Siegal made a copy of the same on a small office tape recording machine.

8. On Wednesday, February 3, 1960, I was in the United States District Court at Foley Square in connection with an order, and I was served by Chief Marshal Lunney with a forthwith subpoena to appear before a grand jury. I asked him what it was all about and he suggested that I go up and see Mr. Londin of the United States Attorney's Office; and I went to Mr. Londin's office with Mr. Lunney. Mr. Londin advised me that Mr. Mollo of the same office was handling the matter with him, and that they would not say anything about it. I went up to the grand jury, was called in, sworn, and asked to come back at 2:00 of that same day. I returned at about 2:00 p.m. and shortly thereafter was taken before the grand jury and questioned by Mr. Mollo, with Mr. Londin and Mr. Greene present. I was asked whether I had sat through the trial and was

familiar with what Nelson Cantellops looked like and I said that I had and was. I was asked when I last saw Nelson Cantellops and I related to them, among other things, the substance of the meeting which took place at the Church on January 27, 1960. I was asked to come back the next morning, February 4, 1960, and I did. After staying about for a considerable time, I was asked by Mr. Londin to return at 2:00 again. I returned at about 2:00 p.m. and after staying about for a while I was told by Mr. Londin that they would call me if they wanted me further.

9. On February 4, 1960, while waiting to be called before the grand jury, I met Mr. Lauritano going into the grand jury in the morning and I met Mr. Siegal going into the grand jury in the afternoon. Mr. Lauritano later advised me that he had turned over his wire recording of the meeting at the Church to the United States Attorney's Office; and Mr. Siegal later advised me that he had likewise turned over to the United States Attorney's Office his tape recording which he had made from Mr. Lauritano's wire recording. I also understand that Mr. Siegal has informed the grand jury concerning various circumstances leading up to the arrangements for the meeting at the Church.

10. In connection with the proper safeguarding of the interests of our clients it appeared that it might be desirable to obtain the return of either the original or a copy of the recording of the meeting in the Church. I understand requests were made to the United States Attorney's Office for this to be returned; and that after a number of delays, there was returned to someone from Mr. Siegal's office, on or about Thursday, March 3, 1960, the tape recording, or a copy thereof, which Mr. Siegal had made from Mr. Lauritano's wire recording. Mr. Siegal turned his recording over to Mr. Lauritano to have a copy made and on Tuesday, March 8th, Mr. Lauritano brought his copy to my office so that I could make a copy from it. This copy that I made was barely audible because of noises.

On March 11th I took it to a commercial recording firm at 1600 Broadway (Titra) and requested them to try to make it audible. They suggested that if I could get the tape from which it was copied, then it might be possible for them to do so. On March 14th I requested Mr. Lauritano to lend me the tape (which he still had) which had been returned to Mr. Siegal by the United States Attorney's Office. I then took this tape to the commercial recording firm and requested that they make copies of the said recording. The same day, they delivered copies which are considerably more audible. However, there are still some inaudible portions, although it is possible that on the wire recording which Mr. Lauritano turned over to the United States Attorney's Office, some of those portions could also be made out. I have caused to be prepared a transcript (which is annexed to this Affidavit) of what is sufficiently audible on the said tape. Because of the difficulties in portions of the tape, it is possible that there is some error in this transcript; but the substance of it is correct, and is sufficiently clear on the tape, and is also in accord with my recollection of what took place at the meeting. In addition, I have on this transcript identified, where I can, the various voices speaking, to the best of my recollection of the event.

/s/ Wilfred L Davis
WILFRED L. DAVIS

Sworn and subscribed before me this 22nd day of March 1960.

/s/ Elisabeth B. Warfield
Notary Public, D. C.

My Commission Expires March 31, 1963.

ANNEX TO ENCLOSURE 1

Meeting at Mount Carmel Church, The Bronx,

January 27, 1960

Voice
(Where identified)

[Unclear]

Mr. Siegal:
A notary public

We can get a notary public.

[Unclear]

Is there a notary public?

Can we get a notary?

[Unclear]

Do you want to talk in front of a notary public, is that the idea?

Mr. Cantellops:
Well, I'd rather [unclear]

Well, after you finish the statement we can call a notary over to notarize it if you want to do it that way. Or do you want him to listen to the entire statement? Is that the idea?

Do you want the notary to listen while you write your statement?

Mr. Lauritano:
The only purpose of the notary is to verify your [Repeat: the only purpose of the notary is to verify your] signature. But you want a notary public. [Unclear] you are testifying to what you say is true. [Unclear]

[Unclear]

Mr. Siegal:
[Unclear] Let me ask you this. Did you prepare some sort of a statement that you would rather show to the priest while the notary takes the signature on it. Is that the way you want to do it? Any way you want. I don't care.

Mr. Cantellops:
Yeh, that would be okay.

Mr. Siegal:
[Unclear], tell the priest, if you will, that you have prepared a statement in your own handwriting and that you would like to have it notarized in front of him. If that's your thought. If it isn't, you say so. All right now, is there any way of our phoning for a notary public. I would appreciate getting him.

Priest:
First I would like to know what this is all about. May I?

Mr. Siegal:
Well, yes, as far as I am concerned, as far as we're concerned——

Priest:
Well, how does the church come into it? Is the church involved?

Mr. Siegal:
No, the church is not involved.
It is just a question of having a statement made, as I understand it, in front of a responsible party like the church [unclear]

[Unclear]

Mr. Siegal:
It is not a document that is required. It is a statement, as I understand it, made by Mr. Cantellops in which he recants a statement, a statement that he made before. We thought that it ought to be done in front of a responsible person, responsible authority. Suggestion was made that it be done in a church before a priest or a bishop, and that was the reason for being here and the bishop was kind enough to go along with us and say that he will assign, if he was busy, some other priest here as the witness.

Priest:
But you still want a notary public?

Yes, Mr. Cantellops wants a notary public.

Priest:
You want [unclear]

[Unclear]

Did you prepare a document?

Nelson, did you prepare a document [unclear]?

Mr. Cantellops:
Yes.

Oh, you took it out already.

[Unclear]

Read it out.

Suppose you read what it says.

Read it.

Want to read it?

[Unclear]

What day is today?

Mr. Cantellops:
27th

[Unclear]

Is today the 27th or the 25th?

27th.

27th.

[Unclear]

Mr. Cantellops:
I, Nelson Silva Cantellops, verify with this statement that I never met John Ormento or Carmine Galante and that my past testimony was false and untruthful

False and untruthful, did you say?

Untruthful, untruthful.

Mr. Cantellops:
and was suggested [unclear] by agents of the narcotics squad [repeat: and was suggested [unclear] by agents of the narcotics squad] of the Government, by Mr. _____*

* Name, in original furnished to Solicitor General, is omitted in printing.

and various agents, also by the U.S. assistant [unclear] of the federal courts at that time—

What was his name?

Background

Priest:

Hello, Mr. (?) Ruggieri [unclear]

Mr. Cantellops:

At that time, they have [unclear] record who they were.

Mr. Davis:

But you don't wan't to mention his name at this time who the assistant U.S. attorney was?

Mr. Cantellops:

No.

Mr. Davis:

I see.

Mr. Cantellops:

My conscience with the help of God, [unclear] to clarify my past error [unclear] willingly sign this statement [unclear] the presence of present witnesses.

Mr. Davis:

Let me ask you this, Nelson. Listen. I'm curious as to certain things [voices in background]. You said that you never met John Ormento or Carmine Galante. I am fairly familiar with some of your testimony. In part of that testimony, in part of that testimony—I didn't want to interrupt the priest while he is calling for a notary public. In part of that testimony you said that John Ormento and Carmine Galante met you one day, I believe it was at 81st Street and Columbus Avenue or some place like that, and they sent you on a trip to Puerto Rico in the year 1956.

Mr. Cantellops:

'57.

Mr. Davis:

'56 you said.

Mr. Cantellops:

'57.

Mr. Davis:
In your testimony you said '56, as I remember.

Mr. Cantellops:
It can't be.

Mr. Davis:
June or July? Why can't it be '56?

Mr. Cantellops:
It's '57.

Mr. Davis:
Did they send you on such a trip?

Mr. Cantellops:
No.

Mr. Davis:
Did they send you on such a trip in 1956?

Mr. Cantellops:
No.

Mr. Davis:
They never sent you on such a trip.

Mr. Cantellops:
No.

Mr. Davis:
Let me ask you this, Nelson.

[Unclear]

Mr. Davis:
You are talking about John Ormento and Carmine Galante and I won't mention any other names to you, but in connection with them you said you never met them in 1956 or '57. This is not a trial. [Repeat: or '57. This is not a trial.] We are trying to get certain truthful statements before the priest here. Let me ask you this. At that time—it is not a question of cross examination; it is not a trial—I am just trying to get clear in my own mind when you say you never met them—and it was during some previous trial without mentioning when it was—you said that they had sent you on a trip to Puerto Rico, my rec-

ollection was that it was '56. You say you think you said it was '57. But let's say it was fifty—whatever year it was '56 or '57 that you had testified to during the trial, that never happened?

Mr. Cantellops:
No.

Mr. Davis:
That's what I want to know.
Now. One or two other things in connection with people which you just spoke about, and I won't talk about anybody else. When you said they sent you on that trip, you said they sent you down to meet a fellow by the name of Laurensano. Is there such a person in existence? Is that a real name or something you made up?

Mr. Cantellops:
It was part of the testimony [unclear] the same way.

Mr. Davis:
What do you mean, by part of the testimony, the same way. Something they told you to say? I am trying to get it clear in my mind, because we are talking about two people now that you made in that statement.

Mr. Cantellops:
They suggested it.

Mr. Davis:
They suggested it.

Mr. Davis:
Is there such a person as Laurensano, or is that a fictitious name?

[Repeat Mr. Davis:
Is there such a person as Laurensano, or is that a fictitious name?]

Mr. Cantellops:
[Unclear]

Mr. Davis:
You don't know whether the person exists or not? Who had suggested that to you?

Mr. Cantellops:
[Unclear]

Mr. Davis:
People who you have mentioned a few minutes ago in that statement that you read?

Mr. Cantellops:
[Unclear]

Mr. Davis:
They suggested the name to you. So you don't know whether a person by the name of Laurensano exists or doesn't exist, is that correct?

Mr. Cantellops:
That's okay.

Mr. Davis:
Let me ask you this, Nelson. Did you in 1956, [unclear] June, July or August—July, August or September, or '7

[Unclear]

Mr. Davis:
Yes, father. Yes, father.
Can I just get this off my chest? [unclear] Because Nelson is talking about somebody in particular. Did you during either 1956 or '57, you testified that you went to Puerto Rico and you met somebody by the name of Laurensano and that John Ormento and Carmine Galante had sent you on that trip. Did you ever make a trip to Puerto Rico, either in I think you said September 1956 during the trial, did you make a trip to Puerto Rico in September 1956?

Mr. Cantellops:
It couldn't be in September 1956 because I was doing time.

Mr. Davis:
You went to jail on the 18th, Nelson.

Mr. Cantellops:
[Unclear]

[Background—unclear]

Mr. Davis:
If I were to say to you that I remember your testimony said in the early part of September 1956

Mr. Cantellops:
It can't be.

Mr. Davis:
It never happened?

Mr. Cantellops:
No.

Mr. Davis:
It never happened.
You didn't go to Puerto Rico in the early part of September 1956, and that you didn't go either in the early part of September 1956 or '57 for John Ormento or Carmine Galante?

Mr. Cantellops:
No.

Mr. Davis:
Now, let me ask you this. In—talking about John again, you said you met John in a German restaurant on 86th Street in the year 1956 and then that you got into a car and you went over to the west side highway and the car parked and you stopped and got out of that car and went into another car and that then you went up to a meeting in the Bronx with John, in the other car. Did that ever happen?

Mr. Cantellops:
No.

Mr. Davis:
I see. Now, that's John Ormento I am talking about.

Mr. Cantellops:
Yes.

Mr. Davis:
You never met John in a German restaurant on 86th Street.

Mr. Cantellops:
No.

Mr. Davis:
Or in an Italian restaurant on 96th Street.

Mr. Cantellops:
No.

Mr. Davis:
Did you ever get into a car with him and go over to the west side highway, stop the car and pick up some other people and then ride in the—

Mr. Cantellops:
[Unc' ar] You go too far

Mr. Davis:
and then ride in—

Mr. Cantellops:
You go too far [unclear] That's enough; that's enough.

[Unclear]

Mr. Cantellops:
[Unclear] Make it short, cut, okay?

Mr. Davis:
Let me cut it short then. Listen, you never got into the car and went to the west side [unclear]

[Unclear]

Mr. Cantellops:
[Unclear] cross examine me here? This is not a court [unclear] Okay, let me stop; I'm going too far with you; I don't have to go that far.

Priest:
Mr. (?) Ruggieri, this is Nelson Cantellops. He wants to sign a statement in your presence.

Mr. Cantellops:
Who's going to be the witness [unclear]

[Unclear]

Notary:
Did he read that statement?

Mr. Davis:
Suppose he reads it again to you, Mr. Notary.

Mr. Cantellops:
I, Nelson Silva Cantellops, verify with this statement that I never met Mr. John Ormento or Carmine Galante and that my past testimony was false and untruthful and was suggested [unclear] statements by agents of the narcotics squad of the government, by Mr. ————* [unclear] also U. S. Assistant [unclear] services of the federal court at that time. My conscience with the help of God, [unclear] me to clarify my past errors at this time [Repeat: to clarify my past errors at this time] I am willing to sign this statement [unclear] in the presence of present witnesses.

Is that statement true, Nelson? You swear that that's the truth?

[Unclear]

Mr. Cantellops:
Yes. That's the truth.

[Unclear]

Mr. Cantellops:
I think the notary [unclear]

[Unclear]

Notary can notarize it—Father can witness it

[Unclear]

Mr. Davis:
I think there should be—would the notary ask him if this is made of his own free will without any [repeat: without any] duress.

Notary:
Do you make this of your own free—

* Name, in original furnished to Solicitor General, is omitted in printing.

Mr. Cantellops:
With my own free will.

[Unclear]

Mr. Davis:
Nelson, can we stay with John? Can I ask you one more question? Talking about John you said that you and John went up to a place in the Bronx—Mazzie's house—Rocco Mazzie's house in the Bronx. Did that ever take place? Did you ever go up to this house in the Bronx—Rocco Mazzie's house in the Bronx?

[Unclear]

[Enclosure 2 (tape) not printed]

ENCLOSURE 3

My name is Glen E. Bodell and I reside at 5737 Eldora, Las Vegas, Nevada. I am a private investigator licensed by the State of Nevada. My background includes 46 years in police and investigative work as sheriff's deputy in White Pine County, Mr. Henry Nickolson, as Chief of Police, Chief investigator, special agent, private investigator; District attorney's investigator, Clark County, Nevada—Harmon, Chief of Police and Rangers, Boulder Dam Project, Los Angeles Police Department, Secret Service, U. S. Government Secret Service, undercover agent of Agent Henry Taggert, Salt Lake City. Chief of Police, California shipyards, Security Chief, Copper Dome. Chief and Director of Plant Protection and security, Birmingham Modification Center, Birmingham, Alabama, and have been self-employed since 1944 as licensed private investigator. On November 9, 1959, Mr. Wilfred L. Davis engaged me to locate a house from a description that he showed me on a statement that had previously been taken. I made inquiry in the vicinity and finally located No. 14 Stewart Street as the house that was described in the description previously shown to me and at No. 16 Stewart Street, located Mr. and Mrs. Latham who rented rooms at

the No. 14 Stewart Street address. I inquired of them whether they ever had a roomer by the name of Nelson Cantellops and they said they had and that a number of people had inquired about Nelson Cantellops while a roomer at their house. They also advised me that the room receipts, for the tenants who had been roomers at the time Nelson Cantellops had been, in March and April 1955, had been turned over to Mr. Hanlon of the Local Police Department, Detective Division, and they did so pursuant to receiving a note from a Mr. J. Mulgannon, a Federal narcotics agent, who had previously been at their home with Mr. Hanlon of the local Police Department, Detective division; and they did so pursuant thereto; that the room registration slips had never been returned to them but that, in view of the fact that I was inquiring about them, they would request the return of them from Mr. Hanlon; that they would try to have them at their home by the next day because I had told them that I wanted to come over with a gentleman from New York who wanted to take a statement with regard to the stay of Nelson Cantellops at their home. The next morning I, together with Mr. Wilfred L. Davis, went to the home of Mr. and Mrs. Latham at 16 Stewart Street, Las Vegas, and Mr. and Mrs. Latham wrote out a statement, a copy of which is annexed hereto. At the same time, they turned over to me the roomer's receipts that they had received back from Mr. Hanlon, copies of which are annexed hereto. They also turned over to me a copy of the receipt that Mr. Latham had made with regard to the stay of Nelson Cantellops, a copy of which is annexed hereto, and they informed me that Mr. Hanlon, Lieutenant of Detectives, Las Vegas Police Department, had told them that the original receipt, as to Cantellops' stay and on which Cantellops' handwriting appeared, had never been returned to Mr. Hanlon by Mr. Mulgannon or his superiors in the Federal Narcotics office. They also turned over to me a slip of paper signed by J. Mulgannon requesting that the above receipts be turned over to Mr.

Hanlon. A copy of Mr. Mulgannon's notation is annexed hereto.

On December 20, 1959, Mr. Davis called me and advised me that he would like to meet me again in Las Vegas in the early evening of this day and asked me to meet him at the Sands Hotel, which I did. He had with him a gentleman by the name of Jose P. Linares, who Mr. Davis had advised me was the gentleman who had called for Nelson Cantellops in April 1955 and was the gentleman who was described in the statement annexed hereto of Gertrude and Lester Latham. Mr. Davis asked me if I could get a stenographer for him as he wished to take a formal statement from Mr. Linares and I was able to do so. On the evening of December 20, in Mr. Davis and my presence, Mr. Linares' statement was taken and typed by the stenographer. This is the same gentleman who I took that very evening, on December 20, 1959, to the Latham house at 16 Stewart Street and who was identified by the Lathams as being the person who had called for Nelson Cantellops, who had paid his room rent and who had left Las Vegas with Nelson Cantellops. A copy of that statement, which had been dictated that night in my presence, is annexed hereto. It was not notarized at that time because of the lateness of the hour.

Also annexed hereto is a copy of the statement made by Gertrude and Lester Latham on the 6 day of March, 1960, in connection with their identification of the said Jose Linares.

/s/ Glen E. Bodell
GLEN E. BODELL

Dated: March 6, 1960

ENCLOSURE 4

My name is Gertrude Latham. I reside at 16 Stewart St., Las Vegas Nev. with my husband Mr. Lester L. Latham. I rent three houses 18-16-14 Stewart St. now called East Stewart St. I rent sleeping room by the week. I have

been renting rooms for the Past 14 or 15 years at these addresses.

During later part of March & the beging of April of 1955 I had a roomer by the name of Nelson Cantellops. The picture I have just been shown, which I have initialed appeared to be that of Nelson Cantellops who was my roomer.

According to my best recollection & from a notation made by my husband it would appear and I believe that Mr. Cantellops was my roomer rom March 21 thou April the 4th 1955 for which period the rent totaled $20.00. And I believe he moved out on the 5th day of April 1955 Having stayed over as my notation shows. That he left the next day which would make it April 5, 1955.

My original records of Mr. Cantellops stay was picked up by Mr. Handlon of our local Police department Detective Pureau whom I have known for many years. Mr. Handlon had come to my home with Mr. J. Mulgannon who was a Federal man, as he showed me credentials at the time he was here. Mr. Mulgannon was here about a year ago with Detective Handlon & asked me many questions about Nelson Cantellops & showed me a picture similar to the picture that I have seen today & that I have initialed. Mr. Mulgannon left me a note at a later date and asked me to give the names of the tenants who lived in the same house No. 14 with Cantellops. I have turned the original note left by Mr. Mulgannon over, with my initials on the back, this day to Mr. Bud Bodell the investigator.

Mr. Mulgannon asked me many questions about Nelson Cantellops. I told him that Nelson Cantellops paid me 5.00 towards the rent when he moved in as a roomer on March 21, 1955. The rent for the room was 10.00 and he paid me a 1.00 or two at a time. His second week rent was not paid in full by him and he owed me money. I kept asking him for it but he told me he was so broke that, not to worry he would pay me when he could. I asked him several time to move because he could not pay me my rent

of $10.00 a week, his second week was paid by a friend of his who had come looking for him. before Nelson's friend came, Nelson told me he was out of work & broke. One of the reasons I remembered Mr. Cantellops so well is because I had so much trouble collecting the rent from him. he was so broke. I told all of this to Mr. Mulgannon the Government man when he questioned me. I also told Mr. Mulgannon about Cantellops friend coming here with a car from New York who paid Cantellops rent, I believe also fed him. I remember also that one of my tenants told me that he had fed Cantellops because he was broke. When Cantellops friend came Cantellops wanted him to stay with him in his room, but I told him that his friend couldn't stay because his rent was not paid. His friend said he would pay the rent that was owed, which he did. His friend stayed over one night as near as I can remember, and they left about nine o'clock in the morning & I never saw him again except to see his picture shown to me by Mr. Mulgannon & again today. I saw him & his friend leave & he said they were going home. The man who paid his rent slept with him the night before he left, and is the same man who left with him on the morning the day after his rent was paid up thou. There may have been another man with them but I did not see him. But I do know when they left Nelson & his friend, they stole a pillow & pillow case from the room and I have a notation about Cantellops stealing these things. I told all of this to Mr. Mulgannon when he questioned me. I said to Mr. Mulgannon I remember him very well because he stoled my pillow and case when he left & he was so broke he couldn't pay his rent. My original records were turned over to Mr. Handlon who gave them to Mr. Mulgannon, with the records of other tenants. Mr. Handlon returned the records of the other roomers, But didn't return the record of Mr. Cantellops stay here. Mr. Handlon said the Government man kept them. When the Government man was here with Mr. Handlon they also took a lot of pic-

tures of No. 14 the house Cantellops stayed in. They also took measurements of the house & trees in front of the house. Mr. Mulgannon said he wanted to know about him in connections with some thing to do with narcotics dope. I said how could he have anything to do with dope because he was so broke when he was here. Mr. Mulgannon also asked me about the fellows who called for Cantellops and I said I wasnt sure if it was one or two. But I'm sure that one man paid the rent for Cantellops, I couldn't describe him but he was the same man who drove away with Cantellops when they left. And the same man who had come with Cantellops to my house & Cantellops said this is my friend & he wants to stay a few days with me & I said you cant because Cantellops owes me rent and which the other man Cantellops friend paid for him. I told all this to Mr. Mulgannon when he questioned me. The copies of the records were returned to me are initioned by me. As I said before the record with regard to Nelson Cantellops was not returned to me. And I have been advised that the Government man still has them. He promised to return all my records, but did not return the one with Nelson Cantellop hand writing on it. The Government man also told me that he questioned another landlady about Nelson Cantellops.

Every thing I have written on this page and the six pages before each of which I have signed my name on is the truth to the best of my memory of what took place in connection with Nelson Cantellops. I am signing this on Nov. 11, 1959 at 12-45 P.M. in my home at 16 Stewart St., Las Vegas, Nev., in the presence of my husband Mr. Lester L. Latham, and Mr. Glen E. Bodell.

Witness — Gertrude Latham
Glen E. Bodell — Nov. 11, 1959

I, Lester L. Latham was present when the above pages were written by my wife, Gertrude and know the contents of the statement written by her having read same and the

said statement is true as I remember the facts. I also know that Brad Younger fed Nelson Cantellops because Cantellops was broke.

Witness
Glen E. Bodell

Lester L. Latham
November 11, 1959

State of Nevada:
County of Clark:

On this 11th day of November, 1959, before me the undersigned authority personally appeared Gertrude Latham and Lester L. Latham to me known to be the persons described in and who executed the foregoing seven-page statement and they did duly acknowledge that they executed the same, and that the same true to their own knowledge and belief.

/s/ Kelly Workman
KELLY WORKMAN,
Notary Public

KELLY WORKMAN,
Notary Public, in and for the State of Nevada. My Commission expires
May 11, 1963

Seal

[Enclosure 5 Omitted in Printing]

ENCLOSURE 6

Nelson Cantellops, 9-E1st Apt-5 NY, NY.
Paid 5.00 owes 5.00 from March 21st to Mar. 28th 10.00
Paid 8.00 owes 4.50 from Mar. 28th to Apr. 3rd
Left next day Paid in full

Gone
20.00

Took Pillow & Case
2.50

ENCLOSURE 7

Mr. and Mrs. Latham—

My New York offices asks that we get names of tenants who lived in same house— 14—with Cantellops—March 1955. Please give names to Mr. Handlon of local police—who will be in to see you.

Thanks—
J. Mulgannon

ENCLOSURE 8

My name is Jose P. Linares and I live at .....* I was born June 7, 1930 and I am 29 years old. I am married and my wife's name is Juanita and I have three children.

I have known Nelson Cantellops since about January, 1955. I met him through Joe Loranzana. I was introduced to Nelson Cantelupps by Joe Loranzana, whose correct first name is Angel, but everybody called him Joe. Joe Loranzana was a hotel worker and a waiter and a captain for different hotels. I had known Joe Loranzana for about two or three years at the time he introduced me to Nelson. I met him in New York. Joe Loranzana introduced Nelson Cantelupps to me in a pool room on Columbus Avenue between 63rd and 64th Street in New York City in the month of January, 1955.

Nelson Cantelupps asked me what I was doing for a living when we were introduced. I told Nelson that I gambled and played cards. Nelson told me that he had an idea for making a machine to cheat at Monte. This was a Spanish card game. I saw Nelson from time to time after this meeting at the pool room and we tried to make this gambling device together. We went to a place to buy equipment and later went to a place on 14th Street where Nelson introduced me to a fellow he already knew and wanted the fellow to tell me how much it would cost to

* Address, omitted in printing, appears in photostatic copy furnished to the Solicitor General.

make the gambling device because he wanted me to finance the making of it. We always went together to this place on 14th Street and then we went to a place in Brooklyn—I don't remember the name right now—to ask them to make this machine which we told him was for a magician act, that we were South American magicians and the man told us that we would have to get a patent on it if he made the machine. The place in Brooklyn wanted $1,800 to start it and Nelson wanted me to put up the money but to be partners, half and half with me on the profits. I told him, no good, because if I was putting up all the money if I went into this deal, that I would not share with him half and half. That he would have to raise his own money for his share of the gambling device.

He then asked me to help him buy a diamond because he knew of a diamond switch that he could use to make the money for his share of the cost of the invention. I went with him to the Bowery to a Jewish fellow and he picked out a diamond about two carats and one point and I bought the diamond. I believe the price was about $700, and I bought the diamond in my name. This was a stone alone. It was not mounted. Nelson took me about two or three days later to a place where he ordered a Zircon stone. He wanted it the same size as the diamond and he was going to use this to switch with the real diamond in order to make the money he needed for his share of the invention. He did not find the right size Zircon. The man had one a little smaller but he took that and two or three others anyhow. The next day Nelson asked me to give him a ride to the Bronx in my blue and white Oldsmobile convertible. This car was owned by me but was registered in Orlando Seda's name. I drove him to the Bronx and we went to a bar where Nelson tried to sell one of the Zircons as a real diamond but he didn't find any customers. We left the bar and we went to Pedilla's Jewelry Store with the diamond and the Zircons. While we were in the Jewelry Store, Nelson said to Pedilla, "How much

will you give me for this diamond," and he showed the Jeweler the Zircon. He asked the Jeweler for $600 for it and the Jeweler said something about giving him $400 for it. Something like that. Somebody called the cops while we were in the store talking to Pedilla and Nelson and I were arrested.

I got some friends of mine to get bail put up and to sign the Bail Bond. After the bail was put next day or a few days later, we went to see a lawyer. He wanted $500. I gave him about half of it. I'm not sure of the exact amount I gave him. When we were arrested, Nelson hid the real diamond in his bow tie that he was wearing. I did not take the real diamond from him when we got out on bail. I let him hold it.

At this time Nelson was living with a girl on 61st Street I had a room on 57th Street near 8th Ave. which I took over from Rene Ramirez. Nelson went to this room when I wasn't there and took $150 that I had in a closet and disappeared from the neighborhood. I looked all over for him for about two weeks as I was angry, but he had run away. I wasn't so much interested in the money or the diamond but he had promised me he would tell the truth about the diamond deal and that I had nothing to do with it, that I had just driven him to the Bronx and I wanted him to tell this to the Judge.

I asked everybody who knew him where he was. I went to see the Superintendant of the house on 61st Street where he was living with the girl and I told the Superintendant that I would give him $100 to hold all of Nelson's mail. I told the Superintendant where he could get in touch with me when he got his mail. The Superintendant came to me at my house where I was living at 136 W. 66th St. with about six letters one day. One had a Las Vegas address on the back with a girl's name. I knew he didn't know anyone in Las Vegas so I opened that letter and read it. It was from Nelson to his girl and he told her not to worry about him, not to tell anyone where he was,

that he found a job and he would soon send her some money for fare to come as soon as he made some. I took the letter and put it in my pocket and gave the Superintendant his $100. Dominick Stella was in my house at the time. I took Dominick with me to my car, got into it and left immediately for Las Vegas. I was very mad at Nelson at that time. I was so mad, I only stopped for gas and coffee and kept on driving on through to Las Vegas. I remember we stopped to have frankfurters from a man on a frankfurter wagon.

When Dominick and I got to Las Vegas, we checked the house address and the landlady told us that Nelson was out of the house. I parked my car a few blocks away from the house. I didn't want him to see me because I was afraid that, if he saw me, he would run away again. I could look down the street and see if he was coming. About two hours later, I saw him coming and I ran over and I stopped him. He started to give me a fast explanation as to why he ran away from New York. I pushed him to the back of the house where I was told his room was. He said, "Please, please, let me explain. Don't make any noise. The landlady will hear us." I said, "What's wrong with the landlady?" and Nelson told me he owed her rent money and he was broke and couldn't pay her and didn't want her to know he was home. I said I would pay her because I wanted him to come back to New York with me in order to clear me in Court and because my friends went on the Bail Bond and I was responsible to my friends for him.

We went into Nelson's room and he told me he hadn't eaten for a couple days, he was so broke. I told him I would buy his dinner. Before we went out to dinner, I went with him to the landlady and I told the landlady I was going to pay what Nelson owed plus whatever she wanted to let me stay overnight in the room. That same night I paid Nelson's back rent and for my stay in the room. There was another fellow living in the room that

the landlady didn't know about. He was from Florida. I was mad at Nelson and I tried to hit Nelson a few times but the fellow from Florida asked me not to hit him. After that we went out to dinner. I told him to eat whatever he wanted because I was anxious to get him back to New York.

My friend, Dominick, hid in the room so that the landlady didn't see him. I went to sleep in the bed and Dominick sat up with Nelson to make sure he didn't run away. Later on I got up and I watched Nelson and let Dominick sleep a couple hours in the bed. While I was sitting up with Nelson, while Dominick was sleeping, Nelson told me he ran away from New York to Las Vegas because he knew a sure way to beat the Roulette wheel and he was going to make enough money to pay me for the diamond and the $150 he stole from me in New York before running away, and he would have enough money to pay all his expenses and to clear me in Court. He said he sold the diamond to get money to operate with and that he took a job at the Golden Nugget because he went broke with the money from the diamond. He took the job at the Golden Nugget but he had to give up his job because he had to report to the police and he couldn't do that because of his criminal record. And he was out of work and broke when I picked him up. He was really broke.

A couple of weeks before he came out to Las Vegas when I found out where he was, I was in Court in the Bronx and Nelson hadn't showed up, because he ran away and I told the lawyer to say he was sick. We had been in Court once together and when we had to appear in Court again the second time, he had disappeared and that's when I was really starting to look for him. I was worried about the bail money and being cleared. When Nelson wasn't in Court the second time, I told the lawyer to say he was sick and the lawyer knew the truth why he wasn't there, that he had run away, and the case was adjourned.

After Nelson told me his hard luck story in Las Vegas during the balance of the night, in the morning when

Dominick got up, we all went to the gas station and I got a lubrication job on the car. We left for New York. When I left the rooming house to go to the gas station, I had Nelson alongside of me and Dominick was in the back, because the guy in the back could see what was going on, any move he would make, in case he tried to get smart and the man in the back could watch him while I was driving. One time while I was driving, Dominick sat in the front and Nelson sat in the back and I noticed that Nelson had a pillow and pillow case and a blanket, I think it was a blanket, which he told us he stole from the landlady when he left. Later on I let Nelson take the wheel in Colorado state. I sat in the back and I let Dominick sit alongside of Nelson. I wanted to watch what he was doing. He was driving pretty fast. It was snowing and we slid in the snow and he dented the right rear fender in the back of the car. I was so mad I took the wheel back myself. We had left Las Vegas around the end of the first week or the beginning of the second week of April. I think though it was about the end of the first week. It's pretty hard to remember exactly when it was. We drove day and night and it took us about three days to get back. I kept pushing because I wanted to get back to New York and make Nelson clear me.

When we got to New York, he asked me to go straight to his house on 61st Street. I wanted to go right to the lawyer's because I told the lawyer, before I left New York, that when I caught up with Nelson, I was going to bring him back and have the lawyer surrender him so my friends could go off the Bail Bond. I took him to 61st Street and, when I got there, I saw the girl he was living with with a kid and I felt sorry for Nelson. It was about seven o'clock and just starting to get dark so I left him at the 61st Street house and I told him I would pick him up the next day in the morning to go to the lawyer.

The next day we both went to see the lawyer. He told the lawyer why he ran away to Las Vegas. He told him

that he wanted to make some money on Roulette, the same story he told me, as he was broke and he had to get money for the lawyer's fee. The lawyer told him he had to be in Court because of the bail and because I wanted my friends to get off the bond. Nelson promised to get someone else. Nelson asked me at that time to give him a week to get someone else to go on the Bail Bond for him and I agreed because I wanted someone else to sign the Bail Bond for Nelson as I had asked my friends to bail him out. They didn't know Nelson too good. I also wanted him not to run away again because I wanted him to tell the truth about the diamond. Right in front of the lawyer, he promised to tell the truth in Court and to get somebody to go on the Bail Bond for him.

I went back to Porto Rico a few days later. This was about the end of April. While I was in Porto Rico, I had an accident and was hurt. I had a lawyer in Porto Rico send an affidavit to the lawyer in New York that I was unable to come back for a month. I never did come back to face these charges as I got into other trouble in Porto Rico.

s/ JOSE P. LINARES
12-20-59

Witnessed:

GLEN E. BODELL

[Note: Notarization dated December 26, 1959, omitted in printing, appears in photostatic copy furnished to the Solicitor General.]

ENCLOSURE 9

Mr. Bodell—

This is the Picture of the man who stayed here at 14 Stewart St. with Nelson Canteloppe one night First week in Apr. 1955 The same man who came here to our house with you and Mr. Davis near Xmas Eve. whom we both

recognized as the man who Paid Nelson Canteloppe room rent.

Gertie Latham
L. L. Latham
March 6, 1960

[Attached set of three photographs of Linares omitted in printing]

ENCLOSURE 10

Mr. and Mrs. Latham

A few days before Christmas, 1959, in the evening, Mr. Bodel called my home and asked if he could come over with some people. About a half hour later, at about 10 p.m., Mr. Bodell came over to my home with Mr. Davis and another man. When I first saw the man he looked familiar. I knew that I had seen the man some time before but I did not recall where or when. Upon being introduced to the man and told that his name was Linares, Mr. Linares told me that he was the man who, in April 1955, came to call for Nelson Cantellops and paid his room rent and was the fellow with whom Nelson Cantellops had left. I asked Mr. Linares to describe the room and also the color of the paint on the house in which Nelson Cantellops stayed, and he did so accurately. As I looked at him his face became more familiar to me and I recalled that this man who called for Nelson Cantellops at my home in April 1955 and who assured me, at that time in April 1955, that he would pay Nelson Cantellops' room rent and he did so and is the same man who drove away with Nelson Cantellops in a car when Cantellops left my house in April 1955.

At the time of this incident in December, 1959, my husband, Lester L. Latham, was present and he, too, recalled that this was the man who called for Nelson Cantellops and paid his room rent and drove away with Nelson Cantellops in April 1955. I have initialed a picture of the man who was at my house in December, 1959, with Mr.

Bodell and Mr. Davis and it is the same man who called for Nelson Cantellops and paid his room rent and drove away with him in April 1955.

s/ Gertrude Latham
GERTRUDE LATHAM

I have read the above statement made by my wife, Gertrude Latham, and was present at the time of the incident related therein when Mr. Bodell and Mr. Davis appeared at my home with this man who identified himself as Mr. Linares. I, too, recognized him as the man who called for Nelson Cantellops and paid the room rent that Mr. Cantellops was unable to pay and as the man who left with Cantellops when he left our home in April 1955. I have initialed the picture of the person who was at our home on the night referred to and as being the same man who called for Nelson Cantellops in April, 1955.

s/ Lester Latham
LESTER LATHAM

State of Nevada:
County of Clark;

On this 10th day of March, 1960, before me the undersigned authority personally appeared Gertrude Latham and Lester L. Latham, to me know to be the persons described in and who executed the foregoing 1½ page statement and they did duly acknowledge that they executed the same, and the same is true to their own knowledge and belief.

s/ Kelly Workman
Notary Public

Kelly Workman, Notary Public in and for the State of Nevada. My Commission Expires May 11, 1963.
Seal

ENCLOSURE 11

AFFIDAVIT

Wilfred L. Davis, being duly sworn, deposes and says:

1. On Sunday, December 20, 1959, in connection with the investigation I was making, I located Jose P. Linares and, after asking him various questions, I asked him to accompany me to Las Vegas, Nevada, which he did. As is set forth in the Statement of Glen E. Bodell dated March 6, 1960, on that evening of December 20, 1959, Mr. Bodell and I took Mr. Linares to see Mr. and Mrs. Latham, the proprietors of the rooming house where Cantellops had stayed in 1955. Later that night, Mr. Linares signed the statement by him dated December 20, 1959, witnessed by Mr. Bodell. Because of the lateness of the hour a notary public was not then available. On December 26, 1959, I saw Mr. Linares again, and went with him while he found a notary public before whom he acknowledged his statement.

2. On or about February 26, 1960, I again saw Mr. Linares, and requested him to have some pictures taken, which he did in my presence and I took the pictures and furnished one set of them to Mr. Bodell. This set of the pictures of Mr. Linares is attached to the handwritten statement of Mrs. Latham and Mr. Latham, dated March 6, 1960.

s/ Wilfred L. Davis
WILFRED L. DAVIS

Sworn and subscribed before me this 22nd day of March, 1960.

s/ Elisabeth B. Warfield
Notary Public, D. C.

My Commission Expires March 31, 1963.

ENCLOSURE 12

STATE OF NEW YORK
COUNTY OF CLINTON, ss:

Dominick Stella, being duly sworn, deposes and says:

In the third or fourth week of April, 1955, Joseph Linares asked me to go to Las Vegas with him. I agreed, and that evening, which, I recall as a rainy Friday, we left for Las Vegas in a 1954 or 1955 Oldsmobile two door sedan, owned by Orlando Zito or Zedo. The purpose of the trip was to find and to bring back to New York Nelson Cantellops. I had been told by Joseph Linares that Cantellops had jumped bail and also had taken a valuable ring from Linares. Linares was very angry with Cantellops because of the loss of the ring and his responsibility under the bail bond.

We arrived in Las Vegas the following Wednesday or Thursday. We had stopped at a few motels on the way to Nevada. I do not remember the name of any.

On arriving in Las Vegas, we went to his rooming house. Linares knew the address, as he had taken a letter which Cantellops had sent from Las Vegas to his (Cantellops) wife. I do not remember the address, but I do remember that the rooming house was situated as below.

[Sketch omitted in printing]

X refers to the rooming house where Cantellops stayed. Y refers to a luncheonette on the next block. The Golden Nugget Casino was in the immediate neighborhood as was the Lucky Strike.

The evening of the day that we arrived in Las Vegas we found him [Nelson Cantellops] going into his rooming house. He was overjoyed to see us as he was so broke he did not even have room rent. He said that he had not eaten anything except coffee for the past two or three days. The coffee had been bought for him by the person sharing his room. That person came from Tampa, Florida, and his name is J. B. Yongue. We stayed in this rooming house that night. Linares paid Nelson's back rent as well.

Nelson said he had a system for the roulette wheel, so we threw away some money and the next day started back to New York. We drove straight through and were back in New York on Sunday. About two weeks or so later, I was arrested. I was arrested May 17, 1955.

I first met Cantellops in Las Vegas, and I have been shown a picture to-day, which I have initialed which is a likeness of Nelson Cantellops.

Nelson was living on 61st St. near West End Avenue with his "wife". As far as I know, he was broke at this time.

The casino at which we played roulette, after buying Nelson a meal, was the Golden Nugget.

On returning we drove pretty much straight back, but I do recall going through Colorado, as Nelson skidded on some snow and damaged the rear bumper and fender.

Before signing this page 4, I have read and initialed the three previous pages, and have made this statement willingly and freely. I have not been forced or threatened or intimidated by anyone in anyway.

DOMINICK STELLA

Sworn to before me this 6th day of November, 1959.

Lisle L. Denicore
LISLE L. DENICORE
Notary Public,
State of New York

Residing in Clinton County. Clinton County Official Number 25. My Commission expires March 30, 1960.

ENCLOSURE 13

State of New York
County of Clinton, ss:

Dominick Stella, being duly sworn, deposes and says That when Joseph Linares and myself arrived in Las Vegas at the rooming where Nelson Cantellops was stay-

ing, Linares, alone, spoke to the landlord or landlady. I don't remember whether it was a landlord or a landlady. Linares arranged for the payment of the money that Nelson owed, and also paid for one night's rent for himself. I slept in the same room with Linares and Cantellops but did not pay any rent, never saw the landlord or landlady and to the best of my knowledge, I was never seen by the landlord or landlady.

While the car was being washed and greased across the street from the rooming house, Cantellops walked back to the rooming house. We had already checked out. He came back to the car carrying a package which he put on the back seat.

On leaving Las Vegas, I sat in the front with Linares & Cantellops sat in the back. That evening, I noted Cantellops lying on a pillow and covering himself with a sheet or a blanket. I asked him where he got it and he told me that he had copped it from the rooming house. I knew that we hadn't brought it with us in the car.

Upon thinking it over, I think that I am wrong as to the time when we went to Las Vegas. I am quite sure that it was during April of 1955, but I am not sure as to when in April.

After our return from Las Vegas, Orlando Zito was arrested. I spoke to Cantellops about working for me in the junk business. We never made a deal as he knew nothing about the business. Zito and Linares didn't work with him with junk as Cantellops was a thief and couldn't be trusted. When I realized this, I decided that I would be better off not working with him.

Dominick Stella
DOMINICK STELLA

Sworn to before me this 24th day of November, 1959

Lisle L. Denicore
DOMINICK L. DENICORE

Notary Public, State of New York. Residing in Clinton County. Clinton County Official Number 225. My Commission expires March 30, 1960.

[Enclosures 14, 15 and 16 Omitted in Printing]

ENCLOSURE 17

January 7, 1960

My name is Angel Lorenzano and everyone calls me Joe Lorenzano. I have been called Joe ever since my grandfather called me that when I was a little boy in Puerto Rico. Even my school records in Puerto Rico have my name as Joseph. I first met Nelson Cantellops when I was in Rikers Island jail in 1950 or 1951. Nelson and I were in the same cell block, Block 4. After I left jail, I saw Nelson a few times and I remember that in 1955 I met him in a poolroom around 64th Street and Columbus Avenue, I think it is. The Immigration building was across the street. It was a poolroom upstairs. He was talking about a gambling invention. I remember the year because it is the year I went back to Puerto Rico and I got into trouble there. While in the poolroom, I introduced Nelson to Joe Linares. A fellow by the name of Flores hung around with us later on. Nelson spoke to Linares about his gambling invention and wanted Linares to finance it. I remember that Linares told me that Nelson stole a diamond and some money from him. One time Joe Linares got hold of me in a poolroom and asked me "What kind of fellow did you introduce me to? He stole my diamond and money."

About the end of April, 1955, I left for Puerto Rico and came back to New York about the end of the year. When I got back to New York, I went to work, I believe, at the Gotham Hotel, and worked there as a waiter. I worked breakfast and lunch. I worked in the Gotham Hotel throughout the year 1956 until about November, 1956. Then, I went back to Puerto Rico and worked there from

about November 1956 until about March, 1957. I came back to New York after that and from about April, 1957 until about December, 1957, I worked as a waiter at the Pierre Hotel. I went back to Puerto Rico in December, 1957, and I worked there at the Intercontinental until about September, 1958. I returned to New York after that and from about October, 1958, until the present time, I have been working at the Barclay Hotel.

I was not in Puerto Rico at any time during the year 1956 prior to November, 1956. I most definitely was not in Puerto Rico at any time in the month of September, 1956, and I did not meet Nelson Cantellops in Puerto Rico at any time in 1956. I never in my life met Nelson Cantellops in the Caribe Hilton Hotel or any other hotel in Puerto Rico. I do remember that before I left for Puerto Rico in 1955, I told Nelson Cantellops that if he was ever in Puerto Rico, he should try to look me up. I would be easy to find. All he would have to do is call any of the good hotels and ask for me, because I only worked at the good hotels.

Everything that I have said above is the truth to the best of my recollection. I believe the hotel records will show where I was working as I said.

I have read this statement which consist of four handwritten pages including this one and I have signed each page.

s/ Angel Lorenzano

STATE OF NEW YORK
COUNTY OF NEW YORK, ss:

Angel Lorenzano, being duly sworn, deposes and says that he is the person who signed the above statement; that he has read the foregoing statement and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

s/ Angel Lorenzano

Sworn to before me this 7th day of January, 1960.

s/ Albert J. Krieger
ALBERT J. KRIEGER
Notary Public,
State of New York

No. 30-7367250. Qualified in Nassau County. Term expires March 30, 1960.

[Enclosures 18 and 19 omitted in printing]

FILE COPY

Office-Supreme Court, U.S.
FILED
MAY 5 1960
JAMES R. BROWNING, Clerk

No. 817

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

VITO GENOVESE, *Petitioner*

v.

UNITED STATES OF AMERICA

PETITIONER'S REPLY

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New York, New York

Attorneys for Petitioner

May 5, 1960

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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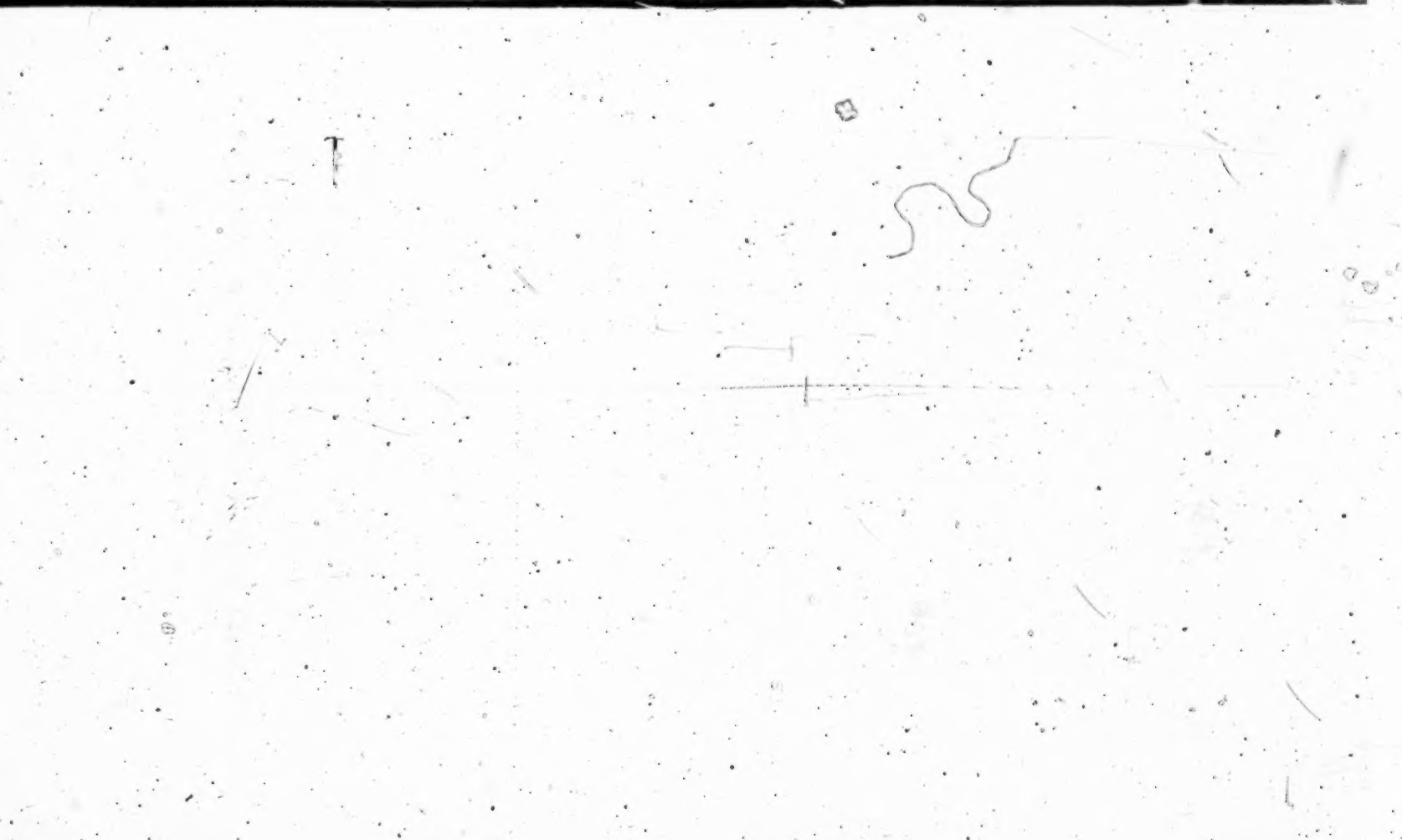

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 817

VITO GENOVESE, *Petitioner*

v.

UNITED STATES OF AMERICA

PETITIONER'S REPLY

Several matters are submitted in reply, following the same order as in the Petition.

I

The first question presented by the Petition (pages 2, 30-34) is whether petitioner Genovese's right to a fair trial was violated by the severely prejudicial publicity which occurred before and during the trial; and whether any of the numerous requests for relief on that account should have been granted. As to this fundamental question the Brief in Opposition (pages 52-53) does not deny that the publicity both before the trial

and during the trial was of a severely adverse nature, containing many prejudicial items which could not properly have been placed before the jury as evidence in open court. "Had they been offered as evidence in court they would not have been admissible". *Coppedge v. United States,* 272 F. 2d 504, 508 (D.C. Cir. 1959).

The Brief in Opposition (pages 52-53) systematically ignores all the points of difficulty for the Government's position. For example, the Brief in Opposition does not deny—and does not comment on—the important role of the then United States Attorney in generating some of the severely prejudicial publicity which occurred before the trial.

Instead, the Brief in Opposition (page 53) advances an assertion, not established or supported by the record, that in this present case "the jurors never read any of the prejudicial publicity". As to the prejudicial publicity during the trial, the Brief in Opposition (page 52) further says "on February 16 and 17, 1959, in response to questioning, the jurors indicated that they did not read any articles concerning the case (Tr. 2705, 2861)." But as has been shown by the Petition (see page 16 and note on pages A-35 and A-36), in both of these two instances, which occurred about half way through the trial, the trial court's question to the jurors was confined to asking whether the jurors had read any article "since we last recessed"—thus covering merely several days[1] in the course of a three-month trial during which the barrage of prejudicial publicity was a continuing phenomenon.

---

[1] The trial was in session on February 11, and then recessed until Monday, February 16 (App. 31a; Tr. 2693-A).

The Brief in Opposition (pages 52-53) likewise seeks some support from a contention that "Two days before the case was submitted to the jury, petitioners refused the Court's offer to inquire of the jury again (Tr. 6681)." This is a transcript reference to a colloquy which occurred during the course of the summations, and was occasioned by the appearance of certain prejudicial newspaper articles just as the trial was ending. Inspection of the record (Tr. 6680-6683; App. 1030a-1032a) will show that the Government's characterization of the transcript is inaccurate; contrary to the Government's claim, the defendants did not then "refuse the Court's offer to inquire of the jury again". In any event, by the time this occurred the prejudice to petitioner was irreparable, and could hardly have been cured by interrogation of the jury.

As was stated by the Court of Appeals in *Briggs* v. *United States*, 221 F. 2d 636, 639 (6th Cir. 1955), on which the Petition (page 32) relies:

> "Although there was no direct evidence in this case that the newspaper articles were read by any juror, it is obvious that one or more of the jurors probably did. In this connection the following statement from the opinion in Meyer v. Cadwalader, supra [49 F. 36], is much in point. 'It is idle to say that there is no direct evidence to show that the jury read these articles. They appeared in the daily issues of leading journals, and were scattered broadcast over the community. The jury separated at the close of each session of the court, and it is incredible that, going out into the community, they did not see and read these newspaper publications. That these published statements were well calculated to prejudice the jury against the plaintiffs and deprive them of a fair trial is a proposition so plain that it would be a sheer waste of time to discuss it.' . . .

"The Government contends that any prejudice that might have resulted to the appellant was waived by him when the trial judge asked his counsel if he wanted the Court to question the jurors as to whether they read the articles and as to whether it might have prejudiced them in the case, to which counsel replied that he did not believe that 'that would be compatible to the proper interest of the defendant.' The trial judge thereupon overruled the motion for a mistrial and proceeded with the evidence.

"Any prejudice to the appellant that existed at that time was not caused by any act of the appellant. It could very well be that questioning the jury would be more prejudicial than helpful. We do not believe that appellant was required to agree to such questioning in order to preserve his contention that the appellant was entitled to a mistrial. . . ."

II

The Petition (pages 34-39) has presented the strong reasons for an examination by this Court, in this case, of the question whether in the federal courts a conviction can be based solely on accomplice testimony in the total absence of corroboration connecting the defendant with the offense. To this the Government's only answer is (Brief in Opposition, pages 27-28): "There is no occasion to consider petitioner Genovese's claim (Pet. No. 817, 34-39) that this Court should reexamine the rule in the federal courts that corroboration of an accomplice's testimony is not required, for Cantellops, although not corroborated as to Genovese, was directly or circumstantially corroborated on so many material particulars that the claim must fall for want of a predicate."

Thus the Government acknowledges—as it must on this record—that Cantellops' testimony had absolutely no corroboration connecting Genovese with the alleged offense. The Government then says this does not matter, because there was some corroboration of other portions of Cantellops' testimony.

But as the Petition makes clear, the rule which petitioner urges that this Court should enforce in the federal courts is the salutary rule which is carefully followed in a large number of the States—namely, that an accomplice's testimony must be supported by corroboration which actually connects the particular defendant with the offense. It is not, as the Government seems to assume, a rule that there be merely corroboration in some other respects, but not tending to connect the particular defendant with the offense.

The Petition (page 35) cited typical authorities from six of the States by way of illustration; the full list of States enforcing a similar requirement of corroboration is much larger. Examination of the illustrative decisions cited from those six States, and of the statutes (many of them of long standing) on which some of them rest, shows how firm is the requirement that the corroboration must tend to connect the particular defendant with the commission of the offense. Thus the California decisions, of which *People* v. *Wallin*, 32 Cal. 2d 803, 808-809, 197 P. 2d 734, 737 (1948), is typical, compare *People* v. *MacEwing*, 45 Cal. 2d 218, 223-225, 288 P. 2d 257, 260-261 (1955), embody the application of Section 1111 of the California Penal Code, which provides:

> "A conviction can not be had upon the testimony of an accomplice unless it is corroborated by such other evidence as shall tend to connect the defend-

ant with the commission of the offense; and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof."

The Minnesota decisions, of which *State* v. *McLaughlin*, 250 Minn. 309, 84 N.W. 2d 664 (1957), is typical, involve the application of the almost identical Section 634.04 of Minnesota Statutes Annotated. The Minnesota court in *McLaughlin* states (250 Minn. at 319-320, 84 N.W. 2d at 672) that "the corroboration must tend to convict the person charged, and it is not enough if it merely shows the commission of the offense or the circumstances thereof", and that "The requirement of § 634.04 that the testimony of an accomplice in crime must find support in and be bolstered by other corroborative evidence is based upon the theory that such testimony has been given by one admittedly corrupt and that it is likely to have been submitted in the hope of clemency."

Similarly, the New York rule applied in *People* v. *Malizia*, 4 N.Y. 2d 22, 148 N.E. 2d 897 (1958), rests on New York Code of Criminal Procedure, Section 399, unchanged since 1882, providing that "A conviction cannot be had upon the testimony of an accomplice, unless he be corroborated by such other evidence as tends to connect the defendant with the commission of the crime." And the Texas rule invoked in *Goodwin* v. *State*, 307 S.W. 2d 264 (Tex. Cr. App. 1957), applies the comparable Article 718, Texas Code of Criminal Procedure.

Similar provisions will be found in other States which have a statutory basis for their corroboration requirement. In most of these States, corroboration

which does not tend to connect the particular defendant with the offense will not suffice.

Similar results obtain in the two States, Maryland and Tennessee, which were cited (Petition, page 35) as enforcing the corroboration rule without the aid of statute. The reasons for Maryland's policy were set forth in *Watson* v. *State*, 208 Md. 210, 217, 117 A. 2d 549, 552 (1955):

> "It is a firmly established rule in this State that a person accused of crime may not be convicted on the uncorroborated testimony of an accomplice. [citing cases] The reason for the rule requiring the testimony of an accomplice to be corroborated is that it is the testimony of a person admittedly contaminated with guilt, who admits his participation in the crime for which he particularly blames the defendant, and it should be regarded with great suspicion and caution, because otherwise the life or liberty of an innocent person might be taken away by a witness who makes the accusation either to gratify his malice or to shield himself from punishment, or in the hope of receiving clemency by turning State's evidence. [citing cases]"

And in *Wright* v. *State*, 219 Md. 643, 650, 150 A. 2d 733, 737 (1959), which reaffirms Maryland's corroboration requirement, the court said that "the corroborative evidence must support the testimony of the accomplice as to some of the material facts tending to show that the accused was either identified with the perpetrators of the crime or had participated in the commission of the crime itself." The Tennessee case cited (Petition, page 35), *Witham* v. *State*, 191 Tenn. 115, 122, 232 S.W. 2d 3, 6 (1950), refers back to two earlier Tennessee decisions which define the degree of corrobora-

tion required in that jurisdiction as "some other evidence fairly tending to connect the defendant with the commission of the crime, so that his conviction will not rest entirely upon the evidence of the accomplice." *Clapp* v. *State*, 94 Tenn. 186, 195, 30 S.W. 214, 217 (1895); *Stanley* v. *State*, 189 Tenn. 110, 115-116, 222 S.W. 2d 384, 386 (1949).

The record in this case squarely presents the question whether such a rule, requiring corroboration actually connecting the particular defendant with the offense, should be the rule enforced in the federal courts. For the reasons stated, this is a question of widespread significance, which warrants review by this Court. The Government nowhere disputes that it is an important and recurring question. The record in the present case brings to the Court an unusually compelling situation for such a review to be made, and in any event, for applying such a rule in the exceptional circumstances of this case as described in the Petition.

III

As to the "Jencks" issues (Petition, pages 26-29, 39-41), the Brief in Opposition (page 43) argues: "Actually, petitioner was given all that was due him under 18 U.S.C. 3500". But that is a question on which, as the Petition shows, petitioner is seeking to have the trial court's *in camera* determination subjected to some appellate review, as contemplated both by the statute and by orderly judicial procedure. The Petition has made evident that there appears to have been a complete absence of appellate review of whether the trial judge's rulings were unduly restrictive.

The Brief in Opposition (page 43) seeks to justify this anomalous situation by arguing: "Since neither

the petitioner nor his codefendants raised this issue in the court below, petitioner's argument falls with his predicate." First, as to at least two important reports by Agent Enright, the issue was raised sufficiently expressly in the Court of Appeals. Portions of the Enright report of April 14, 1958 and all of the Enright reports of May 5 and June 30, 1958, were withheld by the trial judge from the defense (see Petition, pages 25-27). Petitioner's Brief in the Court of Appeals (pages 26-28; see also pages 10-12 thereof), referring to Cantellops' much controverted changes in testimony in Cantellops' successive grand jury appearances, expressly complained of the action taken when the trial court "impounded the above reports [the two Enright reports of April 14 and May 5, 1958] and marked them as Court exhibits without permitting appellant to inspect them"; and also argued that the suppression of those two reports had restricted what the defense on cross-examination of Cantellops could develop as to the circumstances surrounding Cantellops' return to the grand jury. The point was reiterated in forceful detail in petitioner's Petition for Rehearing in the Court of Appeals (pages 2-9).[2] Since Cantellops was the prosecution's principal witness on whom the whole case turned,[3] certainly petitioner is entitled to have appel-

[2] The Petition for Rehearing is set forth in Vol. IV, pages 1-18, of Certified Record of Proceedings in the Court of Appeals. A copy of petitioner's Brief in the Court of Appeals has been lodged with the Clerk.

[3] In connection with the question of denial of access to reports containing pre-trial statements of Cantellops, the Brief in Opposition also contains a minor error which should be corrected. The Brief in Opposition says (page 43, note 25) that "Petitioner misstates the record when he asserts (Pet. No. 817, 27-28) that the trial judge 'refused to make available to the defense' six of Consoli's reports, Enright's April 14, 1958 report and Muglia's

late review of the question whether under applicable principles of law the impounded Enright reports contained material which was not, but should have been, disclosed to defense counsel. The appellate court, but not petitioner's counsel, had access to the contents of the sealed exhibits; and as pointed out in the Petition, there is no way of knowing whether the Court of Appeals has even looked at the contents of the reports unless the Court of Appeals so states in its opinion or order. Thus at the very least, as to two important Enright reports, there has been a serious failure of the appellate process of function properly.

As to the other impounded reports, even though questions as to them may not have been specifically brought to the attention of the Court of Appeals, the sealed exhibits themselves were there for appellate review and proper exercise of appellate responsibilities called for an examination of those reports too by the Court of Appeals. In any event, in view of the nature of the case, the thinness of the supposed evidence against petitioner Genovese and its entire dependence on the testimony of the Government's principal witness Cantellops, the central importance of the issues concerning Cantellops' credibility and Cantellops' various succes-

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two reports." Inspection of the Petition will show it was stated there (and correctly so) that the trial judge refused to make available "certain portions" of those reports. The question presented is whether, as to those portions which were not made available, the trial judge's ruling, after his *in camera* examination and the voir dire, was unduly restrictive—that is, whether all or part of the withheld reports and withheld portions of reports should have been made available; and whether the Court of Appeals has failed to give—and to show that it has given—proper appellate review to that matter.

sive changes in his story,[4] and the other exceptional circumstances affecting the fairness of the trial, it is in the interest of justice that all appellate review of this matter should not be dispensed with. Compare *United Brotherhood, C. & J. v. United States*, 330 U.S. 395, 411-412.

The Petition (page 26, note 8) noted that, apart from statements by the witness Cantellops, there were also

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[4] The Petition (pages 21-22) pointed out that on March 18, 1958—less than four months before this indictment was found though long after Cantellops had become "cooperative"—Cantellops testified before the grand jury to the effect that he had never talked to Genovese and had only seen Genovese once and that by chance. At the trial Cantellops gave contrary testimony. The Brief in Opposition (pages 21-22) says: "Cantellops explained his 'misstatements' as to Gigante and Genovese to the grand jury as follows (G.J. 290-291)", and then it quotes a long passage from Cantellops' June 25, 1958 grand jury testimony, in which Cantellops testified he had now decided to "go ahead and help to the full extent, even knowing the risk that is involved". The quoted passage was not offered in evidence at the trial; the Government, however, has now lodged with the Clerk of this Court the minutes of Cantellops' testimony before the grand jury (see Brief in Opposition, page 3, note 1). In any event, the Brief in Opposition is inaccurate in suggesting that the quoted "explanation" was put forward by Cantellops as an "explanation" of his change in testimony concerning Genovese. Actually, after making the statement quoted by the Brief in Opposition, Cantellops in the entire remainder of this June 25, 1958 grand jury testimony, then proceeded to deal with Cantellops' alleged trip to Cleveland with Gigante, and various other matters (G.J. 291-300), without a single reference whatsoever being made by Cantellops to Genovese; and Cantellops was then excused as a witness (G.J. 300). Not until five days later, on June 30, 1958, when Cantellops was once more recalled to testify again before the grand jury (G.J. 301), did Cantellops for the first time allege to the grand jury that Genovese had any connection with this alleged narcotics conspiracy; and his grand jury testimony on that date does not show any "explanation" by Cantellops as to this last-minute change (G.J. 301-312).

certain other Government witnesses as to whom there had been no appellate review of whether portions of their statements had been improperly withheld from defense counsel. Items withheld included three portions of Agent Schrier's case report concerning this alleged narcotics conspiracy. Schrier was a Federal Bureau of Narcotics agent, who testified as a Government witness (Tr. 628-751);[5] the three withheld portions of his case report were marked for identification as sealed Court Exhibit Q-1 after the prosecution suggested this should be done "for possible appellate review" (Tr. 775-776). As noted in the Petition, there is no indication that any appellate review has been given to such questions by the Court of Appeals. In any event, the Government's Brief filed in this Court on April 4, 1960, in No. 278, *Needelman* v. *United States*—recently argued and now awaiting decision—has made a concession as to interpretation of the Jencks Act, which has a bearing on this aspect of the present case. For in its *Needelman* Brief (page 12, see also page 20) the Government has conceded: "In our view, when an agent makes a report to his superiors or fellow agents of what he sees or hears, he makes a communication to an agent of the government, and his recital is within the reach of 18 U.S.C. 3500 if he becomes a government witness". Though counsel do not know the contents of the three withheld portions of Agent Schrier's case report, this would indicate that—even if the Government should ultimately prevail in *Needelman* on its argument that uncommunicated notes of a Government agent are not "statements" of the agent and are not required to be produced after the agent has become a

[5] Agent Schrier's testimony, while not in any way implicating Genovese, was an important segment in the prosecution's effort to prove the existence of the alleged conspiracy.

Government witness—nevertheless the withheld portions of agent Schrier's case report should not have been withheld here. And at the very least, this matter should be given some appellate review.

IV

The Petition (pages 43-45) showed how the prosecutor in his summation had helped to deprive the defendants of a fair trial, as to a most vital aspect of Cantellops' credibility, by telling the jury that once Cantellops had been sentenced in the New York State court "nobody could get him off of that"; and accordingly that Cantellops could have no motive "to come in here and make up a story"—whereas in fact, shortly after the trial, and "at the request of the United States Attorney" the Governor of New York did commute Cantellops' minimum sentence so that Cantellops could be released on parole. The Petition urged that the prosecutor, when he made this argument to the jury, must have known that there existed the definite possibility of executive action to reduce Cantellops' sentence; and that the prosecutor nevertheless had effectively diverted the jury from considering this factor when making their assessment of Cantellops' motives and credibility.

The Brief in Opposition (pages 51-52) asserts that "The closing argument of the United States Attorney, when read in context, does not carry the implications petitioners place on it." But the context makes it abundantly clear that this is exactly what the prosecutor told the jury; the "implications" were placed there by the prosecutor himself.

V

As additional grounds for vacating the conviction, the Petition (pages 47-50 and Appendix D) set forth the substance of certain information recently furnished to the Government concerning unreliability and perjuriousness of Cantellops' trial testimony. The items related to (1) a major recantation by Cantellops, which occurred on January 27, 1960, of testimony Cantellops had given at this trial; and (2) independent new evidence in refutation of important segments of Cantellops' trial testimony—particularly in refutation of Cantellops' trial testimony concerning the Las Vegas matter which, as has been shown (Petition, pages D-6 through D-19), played a most significant role at the trial.

As to Cantellops' recantation, the Solicitor General states in the Brief in Opposition (page 55) that "the partial recantation relied upon has been repudiated by Cantellops as the product of duress and bribery".[6]

The Solicitor General having furnished information that Cantellops has repudiated the recantation, it would now appear that, before determining whether the Cantellops' recantation would by itself be a proper basis for setting aside the conviction in this case, the courts should examine into the facts relating both to the events preceding Cantellops' recantation and to Cantellops' repudiation of his recantation. For examination of such facts, the appropriate tribunal would be the dis-

[6] For the Court's information: In a letter to counsel dated April 26, 1960, replying to counsel's letter dated March 23, 1960, the Solicitor General has stated that Cantellops' recantation "has been the subject of an extensive investigation. It is our belief that the recantation, which has been repudiated by Cantellops himself, was entirely false and was procured through duress or bribery".

trict court in the first instance, as the Solicitor General has indicated.

On the other hand, it is submitted that the independent new evidence in refutation of important segments of Cantellops' trial testimony does constitute a proper basis for this Court to vacate the conviction, without requiring the matter to be first examined by the district court. The information contained in the various items constitutes a forceful refutation of Cantellops' trial testimony concerning a most significant phase of the case—a refutation independent of any changes, or series of changes, which Cantellops might have made in his story.

The Brief in Opposition (page 55) does not analyze or comment on this independent new evidence, except to say by way of conclusion that the Solicitor General is satisfied "that the new materials do not warrant his consent to a motion for a new trial."[7]

The significance of these items, which are independent of Cantellops' recantation, has been summarized at pages D-6 through D-19 and D-35 through D-57 of the Petition, to which reference is made. As is there set forth, the record of this case clearly establishes that at the trial the Las Vegas matter occupied a role of great importance. If Cantellops lied at the trial in his testimony concerning the Las Vegas matter, then this

[7] For the Court's information: In the letter to counsel dated April 26, 1960 (see note 6, *supra*) the Solicitor General has stated: "The alleged discrepancies in the Cantellops' testimony regarding the Las Vegas trip, to which I do not in any event attribute great significance, can for the most part be satisfactorily explained. That explanation will be forthcoming when the matter is properly presented for determination by a motion for a new trial under Rule 33 of the Criminal Rules."

Court should take "the earliest opportunity" to set aside the conviction. *Mesarosh* v. *United States*, 352 U.S. 1, 14.

According to Cantellops' trial testimony, his March 1955 trip to Las Vegas and the events immediately preceding it marked his own entrance into the alleged narcotics conspiracy and led to the various other activities which he claimed he carried on subsequently on behalf of the alleged conspiracy. Moreover, Las Vegas was the one trip away from New York—among all those Cantellops claimed to have made—for which there existed solid documentary evidence that Cantellops at least had actually been physically in the city he claimed to have gone to, Las Vegas, at the time when he claimed to have been there on behalf of the alleged narcotics conspiracy. Accordingly, at the trial the prosecution used the Las Vegas matter in a vigorous effort to establish plausibility for Cantellops' whole trial testimony. Likewise, considerable time at the trial was spent cross-examining Cantellops, seeking to get at the real facts as to the circumstances under which Cantellops had gone to Las Vegas, the length of time he was there, and what he did while he was there, the location of the rooming house where he stayed, his financial situation at the time, and the circumstances under which and person with whom he left Las Vegas and returned to New York.

According to the information in the items furnished, it now would appear that Cantellops' trial testimony concerning these matters was filled with falsehoods. For a more detailed analysis of the refutation, reference is made to the portions of Appendix D to the Petition just cited. As is summarized at pages D-17 and D-18, according to the information in the items

furnished, it is clear that during the portion of March 1955 which immediately preceded his leaving New York for Las Vegas, there were numerous events in Cantellops' life—some of them documented by official court records—having an entirely different nature from the activities which he described at the trial; and throughout the entire trial, these activities were neither disclosed nor hinted at. More than that, according to the information in the items furnished, Cantellops' trial testimony concerning the important Las Vegas matter was fundamentally false in a number of respects; the independent refutation in the items furnished now shows that Cantellops was in Las Vegas for a period far exceeding the period he repeatedly testified to at the trial; and that, contrary to his trial testimony to the effect that he had money when he was in Las Vegas and also when he left Las Vegas and came back to New York, Cantellops actually was "broke" and unable even to pay his very modest room rent at the rooming house. Further, Cantellops in his trial testimony told a very elaborate story about how he met a complete stranger at the Golden Nugget in Las Vegas with whom he shared expenses on a drive back to New York; and according to the information in the items furnished, that story was fundamentally false, and Cantellops was found at the rooming house in Las Vegas by Linares, whom he knew perfectly well, and Linares (together with Stella) then brought Cantellops back to New York.

In addition, according to the information in the items furnished, it appears that a considerable amount of this refuting information concerning Cantellops' stay in Las Vegas had been made available before the trial to the Federal Bureau of Narcotics, in response to in-

quiries and requests for documents which the Bureau of Narcotics had made as a part of its official investigation. Such information clearly stood in refutation of important segments of Cantellops' trial testimony and would have shattered Cantellops' credibility if disclosed at the trial. Yet no hint was given at the trial that any such information existed.

On the basis of the record in this case it is submitted that the information in the items furnished cannot, with reason, be considered as uncovering mere "discrepancies" (see note 7, *supra*) in Cantellops' trial testimony. The record in this case shows unmistakeably that this was a most vital part of the trial, and that false testimony by Cantellops on these matters should require in justice that the conviction be set aside by this Court. *Mesarosh* v. *United States*, *supra*, 352 U.S. at 13-14. Indeed, in the present trial this testimony by Cantellops had a far greater impact, and played a far more important role, than could be said in the *Mesarosh* case concerning the testimony of the discredited witness Mazzei, which there led this Court to set aside the conviction. Comparable action should be taken here.

CONCLUSION

For the various reasons set forth in the Petition and in this Reply, the Petition for Certiorari should be granted; the judgment of conviction should be reversed; because of the insufficiency of the evidence, a judgment of acquittal should be directed to be entered;

and the Court should order such other action as may be just under the circumstances.

Respectfully submitted,

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No. 817

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

VITO GENOVESE, *Petitioner*

v.

UNITED STATES OF AMERICA

PETITION FOR REHEARING OF ORDER DENYING CERTIORARI

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VITO GENOVESE, *Petitioner*

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UNITED STATES OF AMERICA

PETITION FOR REHEARING OF ORDER DENYING CERTIORARI

Pursuant to Rule 58 this Petition for Rehearing seeks rehearing of the May 16, 1960, denial of certiorari.

A number of recent developments provide important additional reasons why certiorari should be granted, and also fortify the reasons previously presented. These recent developments are, in the main:

1. A recently published opinion by Judge Wyzanski, setting forth applicable criteria with respect to prejudicial publicity in federal criminal trials.

2. This Court's grant of certiorari on May 31, 1960, in Nos. 45, 479, and 872, *Travis* v. *United States*, which likewise involves a corroboration question, and its pertinency to the importance of reviewing the corroboration question in Genovese's case as well.

3. An enlarged group of recent Jencks Act decisions by the Courts of Appeals in other circuits, which make unequivocally clear how seriously the Court of Appeals in the present case departed from proper standards and failed to fulfill its appellate responsibilities under the Jencks Act.

The new developments emphasize the compelling reasons for this Court to review this case, where the trial court has imposed on Genovese what may be virtually a life sentence.

I

The first question presented (Petition, pages 2, 30-34, and Petitioner's Reply, pages 1-4) was whether Genovese's right to a fair trial was violated by the barrage of severely prejudicial publicity which occurred before and during the trial; and whether any of the numerous requests for relief on that account should have been granted. The Petition argued the importance of this question not only to assure a just disposition of this case but also to obtain a clearer definition of the standards applicable in the federal courts; in addition, it urged the importance of the Court's considering the question together with *Irvin* v. *Dowd*, No. 722 (which will be argued next term) in order to assist in further developing and expressing the criteria respectively

applicable in federal and in State criminal cases which involve important and recurring problems of this kind.

A recently published opinion by Judge Wyzanski in *Geagan* v. *Gavin*, 181 F. Supp. 466 (D. Mass. 1960) underscores the recurring nature of the problem and the justification for this Court's reviewing the present case. Judge Wyzanski had before him a habeas corpus proceeding, collaterally attacking the Massachusetts State court convictions in the so-called "Brinks robbery"; and after examining the facts he concluded that the defendants' rights under the Due Process Clause had not been infringed by the alleged adverse publicity. In setting forth the standards which are applicable to federal trials, however, Judge Wyzanski stated (181 F. Supp. at 473):

> "Thus the worst that might be provable by petitioners against the prosecutors is that they participated in releasing for conspicuous and continuous publication evidence which they did introduce against the petitioners, and other evidence which they did not introduce and could not introduce over objection at the trial. Included in this latter category were the criminal records of the petitioners.
>
> "There are grave risks inherent in pre-trial publication of detailed evidence (which may or may not be offered in court) of the commission of a crime, of defendant's alleged participation, of defendant's prior criminal record, and of other material which tends to lead persons to form at least a tentative judgment before they hear in court the evidence and the governing law. Such pre-trial publicity makes it more difficult to be sure that defendant has the benefit of the presumption of innocence and the guarantee of confrontation of the

witnesses against him. In some countries such publicity is punished criminally as a contempt of court. In this country if such publicity is stimulated by public authorities, a federal court, in the exercise of its general power to supervise the administration of criminal justice in its own judicial system, may postpone a trial, or even set aside a judgment of conviction if a defendant's motion for continuance is denied and despite that motion a trial is held forthwith before the effects of pretrial publicity have abated. Delaney v. United States, 1 Cir., 199 F. 2d 107."

Application of these governing principles would lead to setting aside Genovese's conviction in the present case.

II

There were previously set forth (Petition, pages 3, 34-39, and Petitioner's Reply, pages 4-8) the strong reasons for this Court to examine, in this case, the question whether a federal conviction can be based solely on accomplice testimony, in the total absence of corroboration connecting or tending to connect the defendant with the offense.[1] As to this question the reasons advanced for granting certiorari included, among others, the fact that in recent years this Court has

[1] In urging that a corroboration rule should be enforced in the federal courts, it was shown also that a requirement of such corroboration is firmly established in the law of many States. A very recent illustration of the application of this requirement will be found in the Court of Appeals for the Ninth Circuit's decision in *Ing* v. *United States*, No. 16199, decided May 12, 1960 (not yet reported), which arose under Alaska's territorial legislation. The Ninth Circuit reversed the conviction because the proof did not meet Alaska's requirement that accomplice testimony be corroborated by evidence connecting or tending to connect the accused with offense.

given renewed and enlarged recognition to a requirement of corroboration in various other situations (perjury prosecutions; extrajudicial admissions of a defendant; admissions of elements of offense which involves no tangible corpus delicti). It was urged that the need to have a comparable requirement, in order to offset the danger of grave injustice, appears to be at least equally compelling in situations like the present case where the supposed proof consists of accomplice testimony which wholly lacks corroboration connecting the defendant with the offense.

On May 31, 1960, this Court granted certiorari in Nos. 75, 479 and 872, *Travis* v. *United States*. The *Travis* case presents for decision the question whether the corroboration requirement applies to prosecutions for filing false affidavits under Section 9(h) of the National Labor Relations Act, 29 U.S.C. § 159(h), as it does in perjury prosecutions. Accordingly, it now appears that this Court will have before it next term an extensive review on the merits of the scope of the doctrine of corroboration in federal criminal trials.

This strongly reinforces the grounds previously urged for reviewing the corroboration question presented by the present record. As the Petition demonstrated, conviction of Genovese rests solely on the word of Cantellops, who was named as a co-conspirator in the indictment; since there is not a syllable of corroborative proof in any way tending to connect Genovese with the alleged narcotics conspiracy, the record thus squarely presents the corroboration question. Many of the considerations relevant to whether it is in the interests of justice to enforce the corroboration requirement will be the same, or similar, in *Travis* and in this case. The corroboration issues in *Travis* and in this case are

sufficiently closely related so that the Court's examination of both cases at the same time should enable each of the cases to shed light upon the other, thus contributing to orderly development of the administration of federal criminal justice.

In any event—even if the Court should not decide to grant certiorari here in advance of its decision on the merits in *Travis*—it is suggested that an appropriate procedure would then be to withhold action on this case pending the *Travis* argument and decision.[2] A reversal in *Travis* on the corroboration issue might well be based on reasoning which would have forceful and direct application here.

III

The "Jencks" questions (Petition, pages 3, 39-41; Petitioner's Reply, pages 8-13) are likewise illuminated by recent developments.

The issues, it will be recalled, are whether under the *Jencks* decision and the Jencks Act the trial judge, on the basis of his *in camera* examinations, improperly withheld statements and reports from defense counsel; and in any event, whether the Court of Appeals failed to give—and to show that it had given—any appellate review to that matter. In this connection it was urged, among other things, that in *Palermo* v. *United States*, 360 U.S. 343, 355, this Court had made clear the duty of appellate courts under the Jencks Act to examine the sealed exhibits transmitted on appeal, in order to determine whether the trial court was correct or incorrect in

[2] On February 10, 1960, Mr. Justice Harlan denied Genovese's application for bail, with leave to renew if certiorari is granted. On February 11, 1960, Genovese surrendered to custody and is now imprisoned at Atlanta Penitentiary.

withholding particular items from the defense. It was likewise shown that, in the present case, although the sealed exhibits had been transmitted by the District Court to the Court of Appeals in connection with the appeal,[3] nevertheless there was nothing in the opinion of the Court of Appeals to indicate that the Court of Appeals had reviewed the trial judge's determinations on these matters, and indeed nothing to indicate that the Court of Appeals had even examined the sealed exhibits.

Nearly a full year has now elapsed since this Court decided *Palermo*. During the interval numerous Jencks Act decisions have been handed down by the various Courts of Appeals. The opinions in these have been examined. Apart from the present case, not a single case has been found where, despite the fact that the sealed exhibits were transmitted to the Court of Appeals, the Court of Appeals failed to examine the sealed exhibits and to state that it had done so. Indeed, the Courts of Appeals have been most meticulous in stating expressly that they have made such an examination, thus discharging the express duty of appellate review placed on them by the Jencks Act, 18 U.S.C. § 3500(*c*), and at the same time preserving both fairness and the equally essential appearance of fairness.

Thus in *Travis* v. *United States*, 269 F. 2d 928, 944 (1959)—in which, as already indicated (page 5, supra), certiorari has just been granted—the Tenth Circuit stated: "We have carefully examined and compared the complete documents and the documents as they were submitted finally to the defense and con-

[3] In connection with the Petition, the sealed exhibits were thereafter transmitted by the Court of Appeals to the Clerk of this Court (see Petition, page 29, note 10).

clude that the only excised portions related to matters and persons not connected with the present case." In *West* v. *United States*, 274 F. 2d 885, 889-890 (1960), petition for certiorari pending sub nomine *Haug* v. *United States*, No. 946, the Sixth Circuit stated: "we have examined the reports and excisions to determine the correctness of the rulings of the Court under Title 18 U.S.C.A. § 3500, subsection (c)", and "We have examined the reports and the portions excised by the trial judge, and find his rulings correct and in accordance with Title 18 U.S.C.A. § 3500, subsection (c)". In *United States* v. *Killian*, 275 F. 2d 561, 570 (1960), the Seventh Circuit stated: "We have reviewed the original statements produced by the government for inspection by the court and as delivered to defendant after excision by the court". And compare the District of Columbia Circuit's decision in *Howard* v. *United States*, No. 15449, decided May 5, 1940, (not yet reported).

Thus the decisions in various other circuits all reinforce a conclusion inevitable both under the statute and under elementary requirements of fair play. They make it unequivocally clear that Section 3500(c) imposes a firm duty on the Court of Appeals to examine the withheld exhibits (or withheld portions of exhibits) which have been sealed and transmitted for appellate review, in order to determine as an appellate matter the correctness or incorrectness of the various determinations made by the trial judge on the basis of his *in camera* examination. Far from cutting off appellate review, the statute expressly imposes such a duty; and in other circuits the Courts of Appeals have been meticulous in adhering to it.

As has been shown, this case as to Genovese turned completely on the testimony of a single controverted

witness (Cantellops), whose credibility was the principal issue at the trial and whose story demonstrably had changed greatly from time to time. Fundamental fairness, the statute itself, and the uniform decisions of other appellate courts—these all make it necessary that there be some appellate review in some appellate court of the question whether or not certain documents and portions of documents withheld from the defense by the trial judge contained statements by Cantellops which the Jencks Act required to be produced.

Moreover, reports relating to various other Government witnesses were also withheld from the defense—including three portions of a case report by Bureau of Narcotics Agent Schrier, a witness for the prosecution (Petition, page 26, note 8, and Petitioner's Reply, pages 11-12). Recent decisions of various circuits are unanimous in holding that under the Jencks Act a Government agent is like any other witness; that when he testifies, his pertinent prior statements, including his case report, must be turned over to the defense for examination.[4]

Since the prosecution's witnesses, including Agent Schrier, were all subject to the Jencks Act, it was the plain duty of the Court of Appeals to undertake an

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[4] *United States* v. *Berry*, No. 12822, 7th Cir., decided May 2, 1960 (not yet reported); *United States* v. *Sheer*, Nos. 12826-12828, 7th Cir., decided May 10, 1960 (not yet reported); *Karp* v. *United States*, No. 16375, 8th Cir., decided April 25, 1960 (not yet reported); *Howard* v. *United States*, No. 15449, D.C. Cir., decided May 5, 1960 (not yet reported); *Holmes* v. *United States*, 271 F. 2d 635 (4th Cir. 1959); *United States* v. *Prince*, 264 F. 2d 850 (3rd Cir. 1959). Judicial enforcement of this obligation to furnish the statements of Government agents who have testified as witnesses is likewise one of the issues involved in *Travis* v. *United States*, No. 479, already referred to, where certiorari was granted on May 31, 1960.

appellate review of the sealed exhibits and to determine whether the trial judge's rulings, based on his *in camera* examination, were correct or incorrect. This the Court of Appeals has totally failed to do.

There are many situations in the law where particularized determinations are required from the courts, and where the failure of the court below to make a necessary determination is the ground for reversing or vacating its judgment with a direction that the determination be made.[5] Express determinations are normally indispensable in criminal cases, where liberty is at stake—and especially with respect to those actions of the court which are based on *in camera* examinations of documents not available to the defendant.

Only the other day this Court reaffirmed the basic importance of "the notion, deeply rooted in the common law, that 'justice must satisfy the appearance of justice' ". *Levine* v. *United States*, No. 164, decided May 23, 1960. No man should be sent to the penitentiary for what may be virtually a life sentence, when there does not appear to have been any appellate review whatsoever of whether the trial judge's determinations under the Jencks Act were correct or incorrect. If it is felt that this Court should not, in the first instance, make such a determination for itself on the basis of its own examination of the sealed exhibits, then at the very least the matter should be remanded to the Court of Appeals for an initial appellate determination there.

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[5] E.g., *Specack* v. *Strauss*, 355 U.S. 601; *Jones* v. *United States*, 362 U.S. 257, 272-273; *Federal Communications Commission* v. *Station WJR*, 337 U.S. 265; *Blackburn* v. *Alabama*, 354 U.S. 393; *Nilva* v. *United States*, 352 U.S. 385, 396; *Williams* v. *Georgia*, 349 U.S. 375; *Jaffke* v. *Dunham*, 352 U.S. 280; *Goett* v. *Union Carbide Corp.*, 361 U.S. 340.

IV

With respect to the new evidence in this case (Petition, pages 47-50 and Appendix D; Petitioner's Reply, pages 14-18), the Solicitor General's position has been that this matter in the first instance should be raised by petitioner in the District Court. If certiorari is not granted at this time, then it is contemplated that appropriate measures will be taken by petitioner in the District Court for this purpose.

Accordingly, if the Court does not decide at this time that certiorari should be granted, the Court may consider it appropriate to defer its action in the entire case until the impact of the new evidence has been heard and determined below.[6]

CONCLUSION

Recent developments confirm the widespread importance of the questions presented by petitioner and strongly reinforce the reasons why those questions should be reviewed by this Court.

For the reasons set forth in this Petition for Rehearing—as well as for all the reasons previously urged—rehearing and certiorari should be granted.

If the Court does not decide at this time that certiorari should be granted, then in the alternative it is

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[6] The Court followed a somewhat comparable procedure in the *Travis* case, already referred to. There this Court withheld action on the petitions in both No. 75 and No. 479, until No. 879 (which involved the second motion for new trial based on newly discovered evidence) was acted on by the District Court and the Court of Appeals and then became ripe for consideration by this Court upon the filing of a petition for certiorari, at which time the three petitions were considered by this Court together and certiorari was granted on all three.

suggested that the Court hold the case, pending the argument and decision of *Travis* v. *United States* (for reasons indicated at pages 5-6, supra), or pending further proceedings in this case in the District Court based on the newly discovered evidence (for reasons indicated at page 11, supra).

Respectfully submitted,

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June 9, 1960

CERTIFICATE

I hereby certify that this Petition for Rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in paragraph 2 of Rule 58 of the Rules of this Court.

BENNETT BOSKEY